



827

3.

Ww 939 79

THE
HISTORY
Of the HIGH COURT of
PARLIAMENT,

Its ANTIQUITY, PREHEMINENCE
and AUTHORITY;

And the HISTORY of
Court Baron and Court Leet,

A Chronological HISTORY of them from the
earliest Times drawn down to the present.

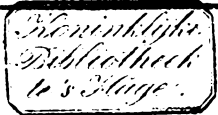
Together with

The Rights of Lords of Manors in Common
Pastures, and the Growth of the Privileges the
Tenants now enjoy there.

VOLUME *the* FIRST.

L O N D O N :

Printed for R. KNAPLOCK at the *Bishop's Head*
in *St. Paul's Church-yard*, and J. TONSON at
Shakepear's Head in the Strand. MDCCLXXXI.



To the Honourable
Sir *JOHN WODEHOUSE*,
of *Kimberly*, Baronet,

This HISTORY of
The Ancient *British* Constitution,

A N D O F

The Ancient and Modern Manner of holding
National Councils and Parliaments,

Is Humbly I N S C R I B E D *by*,

S I R,

Your most obliged,

obedient humble Servant,

THORNHAGH GURDON.

P R E F A C E.

thereby in a short History giving the Reader a large View into times past.

The Laws and Customs of the old *Britons* in a great Measure dropt with their Recorders the *Druides*, and probably would have been totally lost, had not the *Romans* allowed the *Britons* to hold their ancient Village Courts, and there determine their own civil Rights and Properties amongst themselves, whereby some small Part of their ancient Laws and Customs were kept in Memory; with this little Stock the *Britons* (when the *Romans* deserted the Island) set up for themselves, but the hungry *Northern* Hive, soon prevented their intended Work of recollecting their Laws, the Pen was supplanted by the Sword.

The *Britons* finding they were not able to repel the *Northern* Rovers, invited the maritime *Saxons* to come to their Assistance, giving them Promises of plentiful Subsistence and generous Reward. And after the *Northern* Robbers

P R E F A C E.

vii

bers were driven home; the *Saxons* not satisfied with the Generosity of the *Britons*, set up to be their own Carvers, which produced a War between the *Britons* and their Auxiliaries, which ended in a total Conquest of the *Britons*, who were driven into *Wales* and the mountainous *Western* Parts of the Nation, there to save themselves in Places inaccessible to Armies.

The *Saxons* having taken Possession of their Inviters Inheritance, and dividing the Land amongst themselves in agreed Proportions, then set about the Work of Legislature, in order to preserve and keep in Peace what they had stolt by the Sword.

The first *Saxon* Legislator *Ethelbert* King of *Kent* (who according to *Bede*) followed the *Roman* Manner of making Laws with the Advice and Consent of his Senate or provincial Council; and those first *Saxons* Laws were Doms and Judgments upon Criminals that broke the Peace of the Church or

A 4

State,

P R E F A C E.

State, which Dooms were all pecuniary and none sanguinary.

This *Dombec* of King *Ethelbert*, set such high Penalties by Mulcts and Fines upon all Criminals and Resisters of Authority, that the Determination of the Courts of Justice were obeyed and put in Execution, without any riotous Resistance of the Officers who pursued the Orders of Court.

Though Laws to punish Offences *contra pacem* were very certain, yet the Law of Inheritance, and private Claim between Man and Man was quite otherwise, Judgments and Determinations being made in the several *Hall-motes* by the Lords and their Suitors of Court, which Places of Judicature being separate Jurisdictions, having no Dependence on one another, every Lord of a *Soke* or Manor at first determined according to Will, and afterwards according to the Custom of the Manor. In these Courts of the *Soke* or Manor, Laws were made
for

for the better Government of the People of the District: These By-Laws made in the several *Sokes* were very different in one, to what they were in another Manor.

The Captains that came over with the chief Captain Conductor, were Sharers in Lands and Jurisdiction with the chief Captain: Every Captain, afterwards called *Thane*, had Jurisdiction over his own Men, and made Laws in his *Soke*, for the good Government of the People of his District, which being local Laws, were found to be so inconvenient, that several Kings of the Heptarchy made general Laws for the uniform exercising of Justice in their several Kingdoms.

When *Alfred* had reduced the Heptarchy into one Monarchy, he, with the Advice and Consent of his wise Men, made a general Code of Law to be a Rule and Guide to the whole Kingdom.

Edgar

P R E F A C E.

Edgar made a Review of the Laws of his Predecessors, and brought the Laws into a farther Regularity and Uniformity, but still there remained a treble Distinction of Law, *viz.* the *West-Saxon*, the *Mercian*, and the *Dane* Law, which chiefly differed from one another in the Measure of Amercements, Mulcts and Fines, according to the Usage of the several Provinces.

Edward the Confessor upon a Review of King *Edgar's* Laws, with the Advice and Consent of his Parliament, made a Collection of the most useful of the Laws of his Predecessors, and rejected such as at that time were esteemed useless.

This Code of Law of the *Confessor's* time was published and enforced as a Law common to the whole Nation, and so stood Statute Law at the end of the *Saxon* Race, at the Death of *Edward the Confessor*.

William Duke of *Normandy* put in his Claim to the Crown of *England*,
from

P R E F A C E.

xi

from the Donation of King *Edward*, and other Pretensions, which carried such a Plausibleness, as to make the *Norman* Nobility and great Men very forward in assisting him in an Enterprize that offered so fair a Prospect of Success and Advantage to them, who were by Compact to share *Saxon* Lands,, Honours and Power with the Duke.

Duke *William* upon his conquering *Harold* and his Adherents, assumed the Crown with the Consent of the *Londoners* and of many of the *English* Nobility: He seized and took to himself all the Royal Demesns of the Crown and also *Harold's* Honours, Manors, Lands and Moveables; and most of the other Lands of the *English* Nobility and Gentry, were seized and divided amongst the *Norman* Adventurers, in a Proportion suitable to the Number of Ships and Men brought over at their own Expence.

William

P R E F A C E.

William at his Coronation, according to the Manner of the *Saxon* Kings, promised to govern by the Rule of the old Laws of *England*, and caused the Laws of King *Edward* to be reported to him and written from the Mouths of his Commissioners, employed thro' the whole Nation to collect the Laws and Customs used in King *Edward's* time.

At the latter End of his Reign he published a Code of Laws of his own, with the Consent of his Barons in his Court *de more*: And in like Manner were made the Laws of *Henry* I, and *Henry* II.

Misunderstandings and Disagreements arising between King *John* and the Barons, a War broke out between them, and continued till the King conceded to grant a Charter of Liberties, which was renewed and confirmed in Parliament by *Henry* III, and *Edward* I, in whose Reign many good Statutes were made in Affirmance and Declaratory of the good old Laws of *England*.

A

P R E F A C E.

xiii

A great Part of the common Law of *England* did visibly spring from the old *Saxon* Statutes, and if more of them had been preserved, the Trace of the original Institution of many Laws that now appear merely as common Law, would probably appear to have risen from old *Saxon* Statutes: Those that remain and also those of the *Norman* Kings that were made before time of Memory, are admitted and taken into the common Law and become a Part thereof.

The old Part of this History is borrowed from ancient Historians that flourished in or near the times as treated in this History, and now I pay the Debt to such of their Successors of the present time as are Lovers of Antiquity and History and willing to remember their Founders. The Study of the Antiquity and Original of our Constitution, is a Subject noble in itself, and may justly deserve the Encouragement of the most high born
English

P R E F A C E.

Engliffmen, and useful to all Gentlemen of Speculation or Practice, a proper Foundation for a polite modern Superstructure.

He that writes of his own Times, and of Matter of his own Knowledge, is an original Author, whose Judgment, in properly adapting his Knowledge to the Subject he treats, is a necessary Qualification, but above all his Veracity is the very thing necessary for him to imprint in his Reader's Opinion.

He that writes of Times past, must be beholden to those that wrote in those Times of those Times, and that is my Task to gather my Materials from the Ancients. The Stuff is old, the Tacking together is the only new Part of my Essay; if that, like a new Fashion, pleases, I shall ascribe it to the Goodness of the Materials, that set out the Unpoliteness of the Cutter and Contriver.

The Reader will meet with some Words that are now quite out of use,
and

P R E F A C E.

xv

and some not spelt after the modern Manner: In this I follow old Authorities that I transcribe in copying old Historians, old Grants, Records, old Acts of Parliament, Leigers, and such like, their Words or Spelling must be literally followed; to put them into modern Dress, would be as much out of the way as to draw old *Littleton's* Picture in a long full bottom'd Wig, because he was a Judge.

In Page 321 the Word *improve* there mentioned in transcribing a Record, would have been more suitable to the present Age if I had writ *approve*, but then I had not kept close to the Record. In Page 267, I say *Edward the Confessor* in his Court *de more*, *appealed* Earl *Godwin* for the Death of *Alfred* the King's Brother, if I had writ *impeached*, that Word would have been more agreeable to the modern Term in the Case, but the Words of the Record are, *Ego te appello*, &c. which Word the old Author

thor of the Mirror of Justices renders
appeal.

There are some Repetitions in the History where the same Quotation is a necessary Authority in two Places, as

Pag. 173.
174. in the third Chapter that treats of the Lords in Parliament, the eighth, seventeenth, and twenty first Laws of *Edward the Confessor* are transcribed, to shew that none but Lords were Members of *Edward the Confessor's* Parliaments. Then in the fourth Chapter, that treats of Knights, Citizens and Burgesses, I advance, that no Commons were Members of Parliament in *Edward the Confessor's* time, and to

Pag. 209. prove my Assertion, I again produce the aforesaid three Laws of King *Edward*, which may be again read in that Place with more Ease than to be referred back to the third Chapter, and some other Repetitions there are, which are so short as I hope will not make them tedious to the Reader.

The

The following cursory Search into the ancient *British* Constitution, is collected out of such Historians as came within the Reach of my retired Life: The more I found, the more earnest I was in search, and I soon discovered that our modern Laws were not new Constitutions, but built upon old Foundations.

To connect the Ancient and Modern, I begin with the most remote Part, and gradually descend to the present, from thence to shew how modern Customs and Laws, grew by degrees, from ancient, short, positive Constitutions, to more extensive, rational and wise Laws, how the Simplicity of the Ancients hath been refined in later Ages, how by the Knowledge of past Ages, a right Judgment may be formed of the present.

The farther I looked into our ancient Constitution, the more I found Parliaments to be the main Hinge upon which the Government moved
a regularly,

regularly, when Ministers were just, and Parliaments free and uncorrupt; and on the contrary irregularly, when Ministers pursued private Views, from whence Bribery, Corruption and Faction got into the Parliament.

The Interest of a good King, of upright and just Ministers, and of a free Parliament is the same; in such a Conjunction the good of the Publick is the whole View, all harmoniously pursuing that Happiness, of which the following Tract will afford you Instances of the one and the other.

The first Collections I made for Self-amusement and Entertainment, not without some View of enlarging my Knowledge of things past and present, and now drawn into a Chronological Method to the End of King *James* I's Reign, which I present to the Publick as an Index to the more extensive Enquiries of Readers.

T. G.

I N D E X

To the HISTORY of

National Councils or Parliaments.

A.

- A** Bbeſſes, 27, 165, 166, 201, 202, 207.
Abbots, 27, 37, 43, 55, 165, 166, 193, 238.
Abington, 43.
Absence from Parliament, Vol. II. 283, 353, 382.
Absolution, 132.
A&, Vol. II. 286, 288, 326, 338, 342, 346, 370, 497.
Adam, 1.
Adjournment, Vol. II. 450, 482, 483.
Administrator, Vol. II. 440.
Advowſon, 156.
Æbham, 36, 102, 171.
Æthelbert, 88, 114, 164.
Æthelred, 34, 115, 171, 264.
Æthelſtan, 31, 98, 168, 178, 206, 208, 221, 243, Vol. II. 264, 268.
Æthelwold, Vol. II. 264.
Ægmondſham, 227.
Aids, 65, Vol. II. 403.
Alba, 6.
Albans St. 238, Vol. II. 335, 432.
Alderman, 32, 169, 178, 230, Vol. II. 268, 271.
Alfred, 29, 30, 41, 42, 96, 98, 150, 167, 177, Vol. II. 263, 267, 270.
Aldgate, 230.
Alehouſe, Vol. II. 437.
Alenſon, 244.
Alienation, 179, Vol. II. 276.
Allegiance 128, Vol. II. 263, 345.
Alodium, 59.
Alure, Vol. II. 264.
Ambaſſador, Vol. II. 431.
Amercement, Vol. II. 353.
Anglorum Rex potentiſſimus, 24.
Anlave, 35, 171.
Annals, 41, 43.
Annulus, 127.
Appeal, 133, Vol. II. 267, 270.
Appian, 10.

I N D E X.

- Archbishop, 178, Vol. II. 265,
 266.
Arfast, Vol. II. 269.
 Aristocracy, 23, 67.
 Army, Vol. II. 278.
 Arrest, 253, Vol. II. 282, 466.
Arthur, 40, 42, 72, 139.
Articuli super chartas, 84, 149.
Arundel, 186.
 Assessor, 4, 47, 222, Vol. II.
 260.
 Assize, 64, 136.
 Attornies, 159.
 Attorney-General, Vol. II. 436.
Attrebasii, 14.
Audiendum & faciendum, 211.
 Augmentation, Vol. II. 363.
Augustus, Vol. II. 369.
Austin, 26.
 Authority, of Parliament, V. II.
 281, 338, 346, 353, 356,
 364, 381.
Aylesbury, 226.
- B.
- B***Abel*, 2.
Baculus, 127.
 Balance of Power, Vol. II. 278.
Baldred, Vol. II. 265.
Bangor, 26.
 Banneret, 185, 190.
 Bard, 19.
Barnstaple, 243.
 Baron, 8, 36, 46, 55, 67, 69,
 71, 75, 77, 78, 82, 174, 179,
 181, 183, 184, 187, 190, 192,
 194, 197, 209, 210, 212, 214,
 217, 219, 232, 249, Vol. II.
 270, 272, 273.
 Baron Spiritual, 193, 194.
 Baron Lay, 93, Vol. II. 289.
- Baronet, Vol. II. 442.
 Barony, 185, 196, 197, 198,
 214.
 Bastard, 156, Vol. II. 272, 273.
 Battle, 136.
 Bayliff, 80, 222, 227.
Beauchamp, 195.
Beaufort, Vol. II. 342.
Becker, 131.
Bedford, 229, Vol. II. 313, 315.
Belgæ, 14.
Bellamont, 194.
 Benevolence, Vol. II. 357.
Bereafston, 244.
Berghamsted, 26, 95, 165, 175.
Berkley, 197, 198.
Beyeux, 57.
 Bigott, 81, 180, 196, 198,
 Vol. II. 282.
 Bills, Vol. II. 390, 497.
 Bishops, 27, 32, 37, 55, 135,
 161, 178, 193, Vol. II. 266.
 Bishops Lands, Vol. II. 408.
 Bishopricks, Vol. II. 361.
 Blood, 135,
 Bloody Act, 161, Vol. II. 371.
 Blount, 244.
Boadicia, 200.
Bocland, 98, 127.
Bodmin, 237.
Bohemia, Vol. II. 431, 442.
Boscage, 112.
Bosworth, Vol. II. 340, 341.
Boleyn, Vol. II. 367.
Brackley, 68.
Bracton, 45, 140, 144.
Bradensford, 35, Vol. II. 266.
 Bribery, Vol. II. 294, 381, 407.
Britain, 11, 13, 14, 15, 16, 18,
 19, 22, 46, 87, 220.
 Buck, 115.
Buckinghamshire, Vol. II. 327.
- Bull,

I N D E X.

Bull, Vol. II. 408.
Burgage, 224, 232.
Burgess, 66, 81, 217, 220, 224,
 232, 234, 235, 237, 239, 243,
 244, 249.
Burgh, 74, 179, 190, 217, 221,
 245.
Burgh Hugbde, 74, Vol. II. 281.
Burglary, 103.
Bury, 37, 68, 81, 84, Vol. II.
 269, 319.

C.

Caerleon, 26.
Cæsar, 12, 13, 14, 87.
Calais, Vol. II. 384.
Calcutta, 165.
Camartba, 21.
Cambridge, 32, 245.
Camois, 188, 189.
Camp, 220.
Canterbury, 43, 265.
Canute, 36, 102, 109, 110,
 172, 182, 206, 208, 210.
Capitaneus, 23, 163, 203.
Capite, 181, 182, 193, 196,
 214, 215, 218, 233, 247, 248,
 Vol. II. 270, 281.
Capitula Corona, 137.
Capitula Itineris, 134, 137.
Capitula de Judeis, 137.
Captains, 47.
Cassavelane, 14.
Castle, 77, 78, 129, 179, 190,
 220, 221, 227.
Catesby, Vol. II. 344.
Cause of Summons to Parlia-
ment, 30, 50, Vol. II. 271.
Champernone, 244.
Chancellor, 77, 78, 160, Vol. II.
 432.

Chancery, 30, 159.
Chaplains, 168.
Chapter-house, 250.
Charge, 101.
Charles, King, 239, Vol. II. 508.
Charter, 10, 70, 82, 84, 87, &c.
 143, 182, 190, 222, 224,
 229, 230, 232, 237, 238, 239,
 241, 242, Vol. II. 264,
 272, 273, 276, 279.
Charters Interpretation, 144.
Chaucer, 251.
Chiefs, 47.
Chester, 56, 245.
Chronologer, 42.
Church, 83, 101.
Church-Lands, Vol. II. 409.
Churl, 8, 32, 169, 204, 205.
Chevalier, 189, 190.
Cinewolf, Vol. II. 262.
Circuit, 134.
Citizens, 81, 134, 217, 234.
City, 221.
Clarence, Vol. II. 329, 340.
Clarendon, 62, 131, 135, 146,
 151, Vol. II. 273.
Claudius, 14.
Clergy, 62, 133, 135, Vol. II.
 436, 442.
Clients, 8.
Clifford, Vol. II. 368.
Cockermouth, 244.
Coke, Vol. II. 397.
Colleague, 23, 163.
Commissioner, 76, 77, 80, 246,
 Vol. II. 272, 289.
Comites, 23.
Companions, 47, Vol. II. 261.
Combat, 137.
Comitia, 6.
Committee, 240, Vol. II. 270,
 438.

I N D E X.

Commons, 10, 29, 37, 62, 78,
 79, 80, 129, 158, 167, 173,
 175, 205, 206, 207, 208,
 209, 210, 211, 212, 213, 249,
 Vol. II. 277, 278, 280, 285,
 286, 287, 289, 292, 293,
 308, 337, 353, 354, 359,
 385, 390.
Common-Pleas, 30.
Communion, Vol. II. 434.
Concedimus, Vol. II. 314.
Conge d' eslire, 127.
Conquest, 55, Vol. II. 272.
Consent, Vol. II. 305, 338.
Consilium, 211.
Constable, 82, 84, 222, 223,
 224, 227.
Consul, 9, 10.
Contract, 3, 47, 128, 163,
 Vol. II. 260, 261.
Convocation, Vol. II. 358.
Corffe-Castle, 238.
Cornwal, 236.
Coroner, 80.
Corruption, Vol. II. 294, 381,
 407.
Coronation, 139, 150, Vol. II.
 263, 272, 346.
Coronation Oath, Vol. II. 261,
 272.
Coronation Sermon, Vol. II.
 281.
Coventry, Vol. II. 323.
Council, 6, 13, 14, 15, 16, 17,
 18, 20, 21, 22, 23, 28, 29,
 47, 76, 162, 163, Vol. II.
 386.
Counsellor, 36, 171.
Counties, 47.
Country Party, Vol. II. 385,
 416, 507.
County, 47.

Court { **Baron**, 12, 52, 126, 227,
 244, Vol. II. 283.
County, 101, 126.
De More, 30, 50, 51, 154,
 176, 177, 181, 208, 213,
 Vol. II. 265, 267, 268,
 269, 270, 271, 275.
Hundred, 126,
Leet, 21, 126, 227.
Record, 445.
Court Party, Vol. II. 385, 416,
 507.
Courtney, 196, 236.
Cox, Vol. II. 409.
Crouchback, Vol. II. 330.
Crowland, 45, 169.
Crown, Vol. II. 367, 368.
Cumberland, Vol. II. 368,
Cumbran, Vol. II. 262.
Curia, 220.
Curio, 220.
Customary, 126.
Cyricseat, 96.

D.

DAmages, 12.
Danes, 115, 116, 117, 118,
 Vol. II. 263.
Dane gilt, 127, 116, 125.
Danmonii, 14.
Darnley, Vol. II. 411.
Deadly Feud, 101, Vol. II. 478.
Debates, Vol. II. 308, 454.
Debts, 153.
Decemviri, 11.
Decenna, 223.
Declaration, 218, 221.
Decuria, 6, 122.
Deliberation, 218.
Deposition, Vol. II. 262, 290,
 298.

Depri-

I N D E X.

Deprivation, 85.
Derby, Vol. II. 331.
Dereham, Vol. II. 409.
 Descent, 126.
 Desertion, 104.
Desmes, 234.
Devon, 196, 236.
Dictator, 9.
 Dignitary, 168, 175.
 Dignity, 206.
 Dispensation, 71, Vol. II. 376.
 Distress, Vol. II. 283.
Disio, 90.
Dombec, 25, 31, 94, 98, 123,
 170.
 Dower, 135.
Drenges, 59.
Dreux, 12.
Druides, 12, 16, 87, 149, 162,
 220.
Dudley, Vol. II. 357.
 Duke, 37, 194.
Dunstan, 35, Vol. II. 266.
Durham, 135, Vol. II. 327.
Durotriges, 14.

E.

E Adric, 26, 88, 164.
 Earl, 32, 37, 81, 183, 197.
East-Angles, 30.
 Ecclesiasticks, 32, 34, 130, 131.
Edlin, 15, 20, 124, 162, 168,
 178.
Edric, 114.
Edgar, 34, 122, 150, 167, 170,
 208, 230, Vol. II. 264, 265,
 266, 268.
Edmund, 33, 36, 100, 169.
 Vol. II. 268.
Edward, Sen. 31, 94, 167,

Vol. II. 264, 265, 266, 268.
Edward Confessor, 37, 41, 45,
 46, 150, 173, 209, 210,
 Vol. II. 266, 282.
Edward I. 80, 141, 147, 153,
 154, 219, 244, 245, 249,
 Vol. II. 277, 286, 299.
Edward II. 83, 85, 218, 238,
 Vol. II. 281, 299.
Edward III. 142, 160, 234, 237,
 250, Vol. II. 281, 282, 283,
 285, 299, 302, 342.
Edward IV. Vol. II. 264, 338,
 340, 360.
Edward V. Vol. II. 340.
Edward VI. 237, Vol. II. 367,
 375, 378.
Edwin, 34.
Egbert, 29, 166, Vol. II. 265.
Eldred, 34, 170.
 Election, 60, 61, 63, 85, 127,
 129, 139, Vol. II. 307, 311,
 370, 379, 389, 406, 411, 413.
Eleanor, 63, 80.
Elizabeth, Q. 226, 237, 238, 244,
 252, Vol. II. 367, 378, 385,
 &c. 402, 447, 453.
Elmham, 37.
Elutherius, 36.
Ely, 43, 57, Vol. II. 409.
Empsum, Vol. II. 357.
England, 166.
Englefbire, 115, 121.
Ensis, 136.
 Entail, 98.
Equites, 12, 231.
Eicheat, 78, 184.
 Escuage, 231.
Essex, 199, 226.
Estelbert, 24, 25, 46, 88, 94,
 150, 164.
Estelred, 35, Vol. II. 267.
Estelwera,

I N D E X,

Eshelwerd, 24, 27.
Eshelwolph, 29, 166, 207.
Evesham, 79, 187, 217, 245,
 249.
 Excommunication, 79, 83, 133.
Exeas Regnum, 134.
 Exemption, 242.
Exeter, 31, 32, 168, 225,
 Vol. II. 265, 268.
Exchequer, Vol. II. 404, 405.
Exchange, Vol. II. 408.

F.

FAction, Vol. II. 408, 507.
 Fair, 229.
 Father, 3.
 Fealty conditional, 61, 73, 128.
 Fee-farm, 225, 228, 231, 234.
 Fee-simple, 199.
 Feofment, 184, 196.
Ferrers, 84, 244, Vol. II. 365.
 Feuds deadly, 52.
 Fifteenth, 232, 233, Vol. II. 437.
 Fine, 108, 115, 120, 122,
 Vol. II. 278.
 Festival, 176, Vol. II. 267, 268,
 270.
 Fire-bote, 107.
 First-fruits, Vol. II. 369, 387.
Fitz Osborn, 180.
Fleta, 45.
Floyde, Vol. II. 442, 443, 444,
 446, 448.
Folcmot, Vol. II. 283.
 Forest, 64, 106, 107, 109-115,
 140.
 Fort, 220, 221, 227.
Fortibus, 196, 245.
Franc almain, 193.
 Franchise, 229, 230.
 Freeholder, 180.

Friburgh, 21, 209, 222, 224.
Full-Wite; 90.

G.

G*Amartha*, 21.
Gascoyn, 82.
Gauls, 12, 13.
Gaunt, Vol. II. 342.
Gemot, Vol. II. 283.
Geradnyffe, 21.
Gerefa, 32, 169.
Germani, 12, 15.
Gild, 229, 230.
Glanvill, 45.
Glassonbury, 43.
Gloucester, 48, 73, 188, Vol. II.
 320, 339.
Godwin, Vol. II. 267, 413.
Goldsmith, Vol. II. 473, 481,
 493, 494.
Goths, 22.
Granchester, 32, 168.
 Grand Assize, 136, 137.
Grandee, Vol. II. 379.
 Grants, 275, 276.
Gratian, 61.
 Great Council, 85, Vol. II. 267,
 276.
Grey, Vol. II. 377, 378.
Grievance, Vol. II. 287, 288,
 300, 419, 437, 457, 478.
Gutbron, 30, 93, 98, 167.

H.

Hall, 457.
 Hall-mote, 183, Vol. II.
 283.
Hart Silver, 115.
Harwich, 246.
 Headborough, 224.
 Head-money, 99, 103,

Helston,

I N D E X.

- Helston*, 237.
Hengbam, 45.
Hengist, 20.
Henry I. 60, 125, 127, 151, 184,
 212, 230, 246, 269, 272, 273,
 280.
Henry II. 62, 130, 133, 177,
 214, 230, Vol. II. 270, 273,
 280.
Henry III. 72, 73, 79, 112, 115,
 142, 146, 217, 218, 225, 230,
 232, 235, 239, 248, 249,
 Vol. II. 272, 274, 279, 281,
 302.
Henry IV. 234, 251, Vol. II.
 303, 304, 305, 306, 307,
 308, 309.
Henry V. 233, 236, Vol. II.
 299, 310, 312, 314.
Henry VI. 159, Vol. II. 314,
 316, 318, 338.
Henry VII. Vol. II. 278, 341,
 342, 346, 347, 353, 354, 356,
 374.
Henry VIII. 226, 237, 242,
 Vol. II. 347, 353, 354, 355,
 356, 357, 364, 365, 369,
 371, 374, 375, 377.
 Heptarchy, 20, 23, 27, Vol. II.
 262.
 Hereditary, 98, 126.
 Herefy, 161.
Heriot, Vol. II. 204, 205.
Hidage, 65, 67.
Hide, 181.
His testibus, Vol. II. 276.
Hilda, 201.
 Historians, 42.
Hlothar, 26, 88, 164.
Hoſtide, 75.
 Holds, 178.
Hob, 195.
 Homage, 127.
Honiton, 245.
 Horn, 41, 45.
 Hospitals, Vol. II. 370.
 Houſe-bote 112.
Howel, 33, 100.
 Hunting, 113.
 Husbandman, 15.
 Huſtings, 39.

I.

James I. Vol. II. 419, 422,
 429.
James II. Vol. II. 301.
James of Scotland, Vol. II. 368,
 411.
Jane, Vol. II. 367.
Iceni, 14, 200.
Jefus, 18.
Jerusalem, Vol. II. 374.
Jews, 18.
Ilcheſter, 239.
Ina, 24, 27, 88, 164.
Incrementum, 229.
 Indictment, Vol. II. 316.
Infangbefe, 209, 223, 230.
Ingulph, 45, 123.
 Inheritance, 126, 135, Vol. II.
 393.
 Inn, Vol. II. 437.
Inſpeximus, 239, Vol. II. 264.
 Interpretation of Charters, 144.
 Investiture, 185, 187, 190, 195.
John, King, 66, 138, 139, 184,
 214, 215, 226, Vol. II. 270,
 272, 274, 275, 276, 280.
 Journal, Vol. II. 391, 430.
Ipswich, 161.
Ireland, Vol. II. 325.

Itine-

I N D E X.

Itinerant Justices, 137.
 Judges, 12, Vol. II. 451,
 452.
Judicia civit. Lond. 168.
 Jury, 78.
 Justiciary, 77, 78.

K.

K *Atherine*, Vol. II. 367.
Kennetford, 57.
Kent, 46, 57, 74, 87.
Kenwulph, 28, 165, 205, 207.
Kidderminster, 195.
Kisfrithin, 15.
 King, 9, 14, 22, 27, 75, 76,
 164, Vol. II. 416, 342.
 Kingdom, 23.
 Knight, 16, 67, 78, 81, 82,
 181, 196, 197, 198, 210,
 219, 231, 234, 249.
 Knight's-Fee, 64, 198, 231.
 Knight's-Fee, half, 137.
King's-Bench, 30.
 Knight's Service, 232.
 Knight of Shire, Vol. II. 317,
 326.

L.

L *Adies*, 201.
Laga, 90, 91, 92.
Lakslight, 90.
Lancaster, Vol. II. 295, 296,
 297, 329, 356.
Lanceston, 237.
Lanfrank, Archbishop, 269.
Langton, Archbishop, 68.
 Larceny, 99.
Lastagium, 230.

Law.

Alfred, 88.
British, 18, 138, 149.
 By-Law, 231.
 Canon, 126, 135, 171.
 Common, 45, 46, 147,
 152.
 Civil, 2, 171.
Curia, 7.
 Customary, 152.
Dane, 90, 93, 94, 150.
Druide, 149.
Edward Confessor, 32, 38,
 39, 40, 41, 122.
 Forest, 110--115.
Howel Dda, 33, 100.
Mercian, 89, 90, 150.
 Naval, 66.
Non scripta, 16, 152.
Norman, 55, 126.
Oleron, 63.
Ripnarian, 126.
Salic, 126.
West-Saxon, 46, 89, 90,
William, 44, 45, 122, 123,
 151.
 Lawyers, 12, Vol. II. 306.
 Legacy, 135.
Leicester, 193, Vol. II. 317.
 Lieutenant, 4.
Leo Justitiæ, Vol. II. 269.
Lenox, Vol. II. 411, 412.
Lepton, Vol. II. 473, 481, 492,
 493, 494.
Lescard, 237.
Lewis, 63, 72, 368.
Liber Constitutionum, 35, 171.
Lichfield, 44.
 Liberty, Vol. II. 403.
 Life and Death, 135, 136.
 Limitation, 45, 129, 153,
 Vol. II. 318, 392.
Linde, 115.
 Livery, 199.

Loan,

I N D E X.

Loan, Vol. II. 357.
Locata, 229.
Long, 407.
London, 32, 65, 83, Vol. II.
 266, 268, 405.
Lords, 11, 32, 59, 79, Vol. II.
 357.
Loftwethbiell, 237.
Lotbar, 26, 88, 164.
Lovel, Vol. II. 344.
Lucius, 39, 40.
Lupus, 56.
Lurdan, 116.

M.

Magna Charta, 25, 60, 66, 67,
 68, 70, 73, 74, 77, 82,
 84, 85, 125, 139, 140, 141,
 149, 153, 160, 193, 194,
 198, 213, 214, 215, 216,
 Vol. II. 274, 276, 277, 280,
 281, 282, 464, 473.
Magistracy, 7, 8.
Malinges, Vol. II. 265.
Maller, 114.
Mandevil, 184, 199, Vol. II.
 496.
Manlaughter, 102.
Manucaptors, 235.
March, Vol. II. 332, 334.
Margaret, Vol. II. 368, 411.
Market, 220, 229.
Marlbrige, 153, Vol. II. 280.
Marry, Vol. II. 388, 389, 421,
 471, 487.
Mary, 239, Vol. II. 367, 368,
 379, 381, 382, 383, 384,
 411.
Marshal, 72, 82, 84, 199,
 Vol. II. 317, 447.

Matrimony, 201.
Maud, 127, 128, 177, 184,
 Vol. II. 270.
Measures, 170.
Melcomb, 234.
Memory, 46, 140, 152.
Miles, 231,
Militia, 52, 99, 204.
Ministers, 236, Vol. II. 404.
Mint, 99.
Mise, 136.
Modus tenendi Parliamentum,
 175, 196.
Mompesson, Vol. II. 438.
Monarch, 22.
Monarchy, 3, 4, 5, 13, 14,
 Vol. II. 263.
Monastery, 42, 43, 44, Vol. II.
 347, 361, 362, 370, 408.
Monopoly, Vol. II. 398, 451,
 504.
Monks, 42, 44, Vol. II. 362.
Montford, 75, 78, 217, 245.
Montgomery, 180, 186.
Monthemer, 188.
Money, 97, 99, 170, Vol. II.
 357, 359.
Mortimer, Vol. II. 316, 335.
Mowbray, 317,
Mullets, 89, 122, Vol. II. 278.
Murder, 103.

N.

Navy, 138.
Negative, Vol. II. 390.
Newburgh, 186.
Nicolson, 90.
Nimrod, 2, 3.
Noah, 2.

Nobles

I N D E X.

Nobles, 8, 10, 27, 163, 164,
194, Vol. II. 276, 278.
Non obstante, 146.
Norman, 53, 54, 55, 56, 58,
65.
Northampton, 62, 132, 134,
135, 151, 192, 193, 214,
Vol. II. 327.
Narshburgh, 233.
Northumberland, 30, 34, Vol. II.
377.
Nottingham, Vol. II. 290.
Numa Pompilius, 9, 11.
Norfolk, Vol. II. 317.
Noy, Vol. II. 454.

O.

OAth, 55, 72, 73, 128, 139,
141, 150, 164, Vol. II.
263, 329.
Oath Coronation, 55.
Odo, 57.
Offa, 24, 28, 88, 96, 165,
Vol. II. 275.
Offences, 5.
Okehampton, 196.
Oleron, 63, 138.
Oxford, 67, 68, 74, 76, 78,
215, 230.
Oppius, 10.

P.

Packington, 226.
Palsgrave, Vol. II. 431, 442,
457.
Paris, 12, 43.
Pardon, 160, Vol. 2. 344.

Park, 113, 114.
Parliament, 38, 56, 60, 66, 74,
75, 76, 77, 78, 79, 80, 81,
82, 83, 158, 179, 194, 210,
212, 213, 217, 232, 235,
236, 237, 238, 243, 244,
Vol. II. 265, 266, 267, 271,
279, 280, 282, 283, 284,
285, 289, 290, 291, 292,
293, 294, 298, 299, 370,
452, 461.
Parliament Authority, Vol. II.
337, 338, 364.
Parliament of Bats, Vol. II.
318.
Parliamentum Indoctum, Vol. II.
306.
Parliamentum Insanum, 75.
Parliament de la Bond, 219.
Parliamentum Diabolicum, V II.
326.
Parr, Vol. II. 367.
Partisan, 16.
Partition, 105, 126.
Pastor, 1.
Passagium, 230.
Palturage, 109.
Patent, 191, 193, Vol. II. 276,
437, 441, 451, 481, 482,
492.
Patres, 7, 8, 9, 11.
Patriarch, 2, 3, 5.
Patricians, 7, 215.
Patriot, Vol. II. 300, 304, 507.
Patrons, 8.
Peace, 97, Vol. II. 313.
Peer, 185, 187, 190, 196, 217.
Pembroke, 199.
Peter Pence, 101, 133.
Peterburgh, 192.
Petition, 158, 159, 233, 237,
239, 240, Vol. II. 263, 286,
302, 354, 437, 488.

Pictis,

I N D E X.

Picts, 20.
Pilate, 18.
Philip, 239 Vol. II. 381, 382,
 383, 388.
Plebeians, 7, 8, 9, 215.
Penenden, 57.
Pleas, 63.
Plimpton, 225.
Plowbote, 100.
Pontagium, 230.
Pontfract, 239.
Poor, Vol. II. 410.
Pope, 13, 39, 71, 131, 132,
 141, 145, Vol. II. 369, 408.
Pope Pius, Vol. II. 408.
Popery, Vol. II. 375, 385, 387,
 393, 431, 434, 415, 458.
Port-reve, 128, 244.
Port-Soken, 230.
Prayers, 95.
Preamble, Vol. II. 305.
Precedent, Vol. II. 453.
Prerogative, 82, 83, 108, 111,
 Vol. II. 259, 278, 300, 309,
 314, 338, 355, 370, 395, 403,
 416, 418, 419, 436, 439,
 441, 444, 449, 457, 467,
 483, 484, 485, 487, 488,
 491, 506.
Præfectus, 9, 32, 169.
Præmunire, Vol. II. 369.
Prescription, 229, 239, 240.
Priests, 168, 169, 178, 179.
Prince, 1, 3, 212, Vol. II.
 321, 322.
Prior, 55, 193.
Privilege, 108, 210, 252, 253,
 Vol. II. 259, 265, 267, 278,
 282, 283, 284, 291, 300,
 304, 316, 350, 364, 366,
 391, 394, 399, 403, 416,

418, 431, 444, 449, 457, 458,
 459, 462, 463, 474, 475,
 476, 477, 478, 480, 484,
 485, 488, 489, 490, 491,
 506.
Privy Council, Vol. II. 270,
 316, 386, 492.
Private Caballing, Vol. II.
 304.
Proclamation, 159, Vol. II.
 373, 413, 476, 486, 506.
Prohibition, 146.
Property, 6, 22, Vol. II. 260,
 261, 347, 417.
Proceres, 183, 184, 207, 209.
Prorogation, Vol. II. 282, 364,
 377, 451, 478.
Procuratores, 165, 203, 205,
 206, 207.
Protest, Vol. II. 448, 452, 285,
 286, 491, 492.
Purlieu, Vol. II. 286.
Purveyor, 104, Vol. II. 286.
Protector, Vol. II. 321.

Q

Queen, Vol. II. 320.
Quibusdam, Vol. II. 491.

R

Rannes, 114.
Ratcliff, Vol. II. 344, 379.
Record, 41, 152, 155, Vol. II.
 353, 444, 445, 447.
Redboran, 36, 171.

Refor-

I N D E X.

Reformation, Vol. II. 377.
Regent, 9.
Register, 42, 43,
Relief, 199.
Religion, 18, Vol. II. 377, 386,
 387, 430, 431, 471.
Rent, 62, 223, 224, 225, 227,
 228.
Repeal, Vol. II. 376.
Repents, 224, 236, 237, Vol. II.
 311, 318, 355.
Resignation, 85.
Restitution, 58, 59.
Return, 236.
Reve, 225, 227, Vol. II. 271.
Revenue, Vol. II. 419.
Richard, 51, 63, 137, 177,
 185, 234, Vol. II. 277, 282,
 287, 288, 291, 296, 297,
 299, 301, 302, 303, 339,
 341.
Richardson, 253.
Richmond, Vol. II. 341.
Rivers, 225, 236, 245.
Robbery, 102, 155.
Rockingham, 60, 247,
Rolls, 41, 42, 157, 158.
Roman, 5, 6, 10, 11, 18, 19,
 88, 163, 220.
Romance Dialect, 38.
Romulus, 6, 7, 8, 9.
Runing Mead, 70, 185.
Rutland, Vol. II. 332.

S

Sabines, 9.
Sac, 209, 210, 223, 230.
Sacrifice, 12.
Sacrament, Vol. II. 433.
Salisbury, 81, Vol. II. 323.

Sanctuary, 96.
Sandwich, Vol. II. 327.
Sandys, Vol. II. 447, 459.
Saxons, 20—29, 88, 163, 247,
 Vol. II. 260, 261, 262, 263,
 265, 266.
Scandalum Magnatum, 148.
Scotts, 20.
Sedition, 17.
Seal Great, 87.
Seal Privy, 86.
Seignory, 47, 48, 183, 209,
 Vol. II. 260.
Senate, 6, 7, 8, 9, 10, 11.
Senatus Consultum, 36, 102.
Servius Tullius, 9.
Seymore, Vol. II. 367.
Shield, 15.
Sherborn, 58.
Sheriff, 80, 81, 159, 224, 235,
 236, 237, Vol. II. 291, 357.
Ship Money, 116.
Shipham, Vol. II. 409.
Silures, 14.
Simony, Vol. II. 409.
Soc, 209, 223, 227.
Soke, 183, 209, 223, 227, 230.
Solidum, 22.
Somerset, Vol. II. 322, 326,
 342.
Spanish Match, Vol. II. 381,
 431.
Speaker, 248, 249, 250, 251,
 253, Vol. II. 383, 390, 397.
Speech, Freedom of, 251, 252,
 253, Vol. II. 282, 398, 434,
 459.
Stagg, 115.
Stallagium, 230.
Statute, 85, 88, 89, 113, 137,
 138, 147, 148, 151, 152,
 153.

I N D E X.

- 153, 154, 155, 156, 159, Vol. II. 278, 281, 305,
 387.
Stephen, 61, 128, 129, 130, 177, 182, 184, 213, 215,
 270, 273, 280.
Steward, 227.
Stigand, 57.
Stile, Royal, Vol. II. 259, 263,
 264, 265, 271, 272, 274,
 276, 314, 315, 338, 346,
 356, 380.
Stockbridge, 227.
Stola, 136.
Stuart, Vol. II. 411.
Subsidy, 211, 216, 223, Vol. II.
 305, 357, 366, 383, 403,
 431, 432, 437, 504, 505.
Subpœna, Vol. II. 394.
Successor, Vol. II. 367, 368,
 389, 393, 411.
Suffolk, Vol. II. 320, 368, 377.
Suffragan, 161.
Suit-Service, 183.
Suiters, 47.
Summons, 30, 50, 51, 79, 176,
 185, 187, 181, 189, 190,
 191, 192, 196, 245, Vol. II.
 284.
Sunday, 101.
Survey, Vol. II. 362.
Suffex, Vol. II. 380.
Surry, Vol. II. 344.
Swinford, Vol. II. 342.
Synod, 2.
- T.
- T***ail*, 153.
Tainland, 180, 186, 187,
 190.
Talbot, 196.
- Tallage*, 66, 83, 153, 232,
 233.
Tarquin, 9.
Tatus, 9.
Tax, 124, 125, Vol. II. 306.
Temple, 68, Vol. II. 434.
Tenant, 65, 66, 79, 80, 232.
Tenmentale, 222.
*Tenth*s, 232, 233.
Tenure, 65, 66, 105, 155, 185,
 186, 190, 191, 195, 196.
Thane, 8, 59, 163, 169, 173,
 180, 204, 210, Vol. II. 265.
Thane Ecclesiastick, 169,
Theam, 209, 230.
Theolonium, 230.
Theaw, 174, 210.
Thetford, 161.
Third Penny, 183.
Thol, 174, 209, 230.
Thornton, 45.
Thorpe, 252, Vol. II. 285.
Thrave, Vol. II. 339.
Tilts and Tournaments, 64.
Tipstaff, 251.
Tith, 134, 165, 166, 173,
 223.
Toleration, Vol. II. 431, 472,
 474.
Toll, 223, 224, 227.
Toryton, 237, 242.
Tories, Vol. II. 416.
Totnais, 243.
Townshend, Vol. II. 438.
Tractatum, 211.
Trailbaston, 84.
Treason, 41, 102, Vol. II. 316,
 345.
Treasure, Vol. II. 357.
Treasurer, 77.
Tregony, 244.
Trespais, 5.

Tribe,

I N D E X.

Tribe, 6, 7.
 Tribute, 141.
Trinobantes, 14.
Trinodis necessitas, 108.
Troja, 39.
Truro, 237.
Tyrannus, 67, 129.
Tyrrel, Vol. II. 457.
Tylwysh, 19.
 Twelve Tables, 10.

U.

Uvasor, 183, 210.
 Venison, Vol. II. 406.
Verolam, 28.
Vicecomes, 178.
 Village, 6, 18.
 Villain, 15, 59, 227.
 Villainage, 224, 227.
Virgil, 247.
Viron, 173.
Vortiger, 20.
 Vote, 85.
Vox Populi, 85.
 Undertakers, 22, Vol. II. 431,
 432.
 Union, Vol. II. 412.
 Usage, 140.

W.

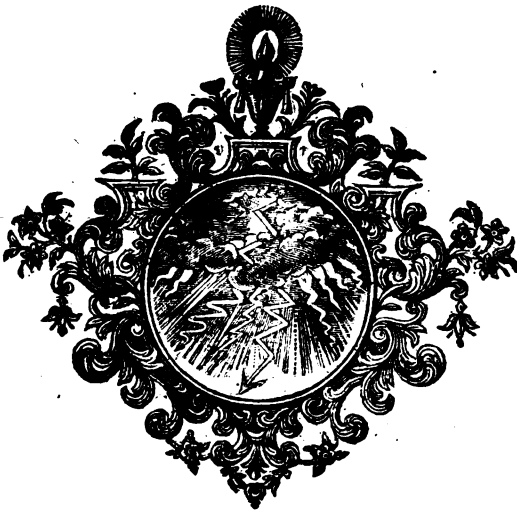
W Ages, 236, 238, 239,
 Vol. II. 301, 302.
Wales, 33, 36, 171, Vol. II.
 335, 370.
Wantage, 102, 171.

Ward, 64, 78, 230.
 Warren, 58, 180, 186, Vol. II.
 272, 273, 282.
Warwick, 186, Vol. II. 317,
 323.
 Weights, 138.
Wergild, 178.
Westminster, 49, 61, 80, 81,
 210, Vol. II. 277, 281, 292,
 433.
 Whigs, Vol. II. 416.
 Widow, 201.
Wightred, 26, 88, 95, 164.
 Will, Vol. II. 347.
William Conqueror, 39, 44, 45,
 48, 50, 51, 55, 59, 112,
 113, 122, 123, 151, 177,
 179, 210, 221, 231, 243,
 246, 247, Vol. II. 268,
 272.
William Rufus, 38, 40, 60,
 113, 124, 125, 184, 247.
Willongby, 244.
Winchelcomb, 165, 233.
Winchester, 36, 48, 60, 67, 79,
 129, 166, 170, 205.
Wisa, 21, 34, 35, 46, 163,
 204, 246, Vol. II. 260, 263,
 264, 265, 349.
Wise, 90.
Witblas, 169.
Witenagemote, 21, 23, 30, 35,
 36, 163, 166, 172, 177, 178,
 205, 206, 207, 208, Vol. II.
 260, 263, 265, 266, 267,
 271, 283.
Wodestock, 35, 102, Vol. II.
 264.
Wolfey, 357.
Wolves-head, 12.

Women.

I N D E X.

<p>Women, 165, 200, 201, 207.</p> <p>Worcester, Vol. II. 264, 265.</p> <p>Writ, 137, 185, 187, 191, 192, 195, 211, Vol. II. 288, 491.</p> <p>Writing, 4.</p> <p>Wulfamere, 167, 208.</p> <p>Wulstan, Vol. II. 266.</p>		<p>Y.</p> <p>York, 233, Vol. II. 320, 321, 322, 323, 324, 345, 356.</p> <p>Z.</p> <p>Zouch, Vol. II. 344.</p>
--	--	---



b

The

The Titles of the Books and Manuscripts made use of, more at large than in the marginal Notes.

A.

ACTA Regia. An Abridgement of *Rymer's Fœdera*, London, 1715. 8vo.

Ælius Lampridius.

Alfredi Vita. *Alfredi magni Anglorum Regis Vita*, by Sir *John Spelman*, published by *Christopher Wase*, with a Commentary by Mr. *Obadiab Walker*, Master of *University-College*, printed at *Oxford*, A. D. 1678. 8vo.

Alfred's Life. The Life of *Alfred the Great*, by Sir *John Spelman*, published by *Thomas Hearn*, A. M. at *Oxford*, 1709.

Archaion. *Archainomia, sive de priscis Anglorum Legibus à Gulielmo Lambert*, published by *Abraham Whelock* at *Cambridge*, A. D. 1644. folio.

Antiq. Parl. The Opinions of sundry learned Antiquaries touching the Antiquity, Power, &c. of Parliament, London, 1658. 12mo.

St. Amand.

B.

Ld. Bacon's H. VII. Lord *St. Albans's* History of *Henry VII.* London, 1629. folio.

Baker's

Authors made use of in this Work.

- Baker's Chron.** Chronicle of the Kings of *England* by Sir *Richard Baker*, fifth Edition. *London*, 1670. folio.
- Baronage.** The Baronage of *England* by *William Dugdale*. *London*, 1675, 2 vol. folio.
Tome, 2d. 1676. folio.
- Beda.** *Ecclesiasticæ Historiæ gentis Anglorum Libri quinque Beda Anglo Saxone Authore*, *Antverpiæ*, 1550. folio.
- Bedford.**
- Bernard.** The Lives of the Roman Emperors from *Domitian*, where *Suetonius* ends, to *Constantine the Great*, Translated by *John Bernard*, A. M. *London*, 1658. 2 vol. 8vo.
- Biondi.** History of the Wars of *England* between the two Houses of *York* and *Lancaster*, by *Francis Biondi*, Englished by the Earl of *Monmouth*, *London*, 1641, 2 Parts, folio.
- Bodin de Repub.**
- Bobun Q. Eliz.** *Bobun's* Character of Queen *Elizabeth*, *London*, 1693, 8vo.
- Braſton.** *Braſton's* Treatise of the Laws and Customs of *England* in *Henry III's* time, *London*, 1640.
- Brady.** Compleat History of *England*, by *Dr. Brady*, *Savoy*, 1685.
- Brady** vol. 2d. Continuation of the compleat History, by *Dr. Brady*, *Savoy*, 1700.
- Brady's Tracts.** Introduction to the old *English* History in three Tracts,
1. An Answer to *Petyr's* Rights of the Commons, and Animadversions upon *Jani Anglorum facies nova*, 1683, in the *Savoy*.
 2. Answer to *Argumentum Antinormanicum*, *Savoy*, 1684.
 3. History of the Succession of the Crown of *England*, printed in the *Savoy*, 1684. folio.

Authors made use of in this Work.

- Brady's Burghs.* Historical Treatise of Cities and Burghs by Dr. Robert Brady, London, 1690. folio.
Buchanan. Buchanan's History of Scotland, translated by Bond. London, 1722. 2 vol. 8vo.
Burnet's History of his own Times. London, 1724. folio.
Burnet's Reform. History of the Reformation of the Church of England, by Gilbert Burnet, D. D. London, 1681, folio.
Second Volume, London, 1681. folio.
Third Volume, London, 1715. folio.

C.

- Cæsar.* C. Julii Cæsaris quæ extant, ex officina Plantiniana Raphelengii, 1606. 8vo.
Camb. Brit. Cambden's Britannia. Oxford, 1594. 4to.
Camb. Gib. Cambden's Britannia by Bishop Gibson, 1695, folio.
Camb. Annals. Cambdeni Annales, ab An. 1603, ad An. 1623, London, 1691, 4to.
Camb. Apologia.
Camb. Q. Eliz.
Care. English Liberties by Care, London, 1719.
Chron. Sax. Chronicon Saxonicum, Edmundus Gibson, A. B. Oxford, 1692.
Coke Rep. The several Volumes of Sir Edward Coke's Reports.
Cot. Posthu. Cottoni Posthuma. Divers Pieces of Antiquity by Sir Robert Cotton, published by J. H. London, 1679, 8vo.
Cot. Records. Abridgement of the Records of the Tower, collected by Sir Robert Cotton, published by William Prynne, London, 1657.

D.

- Daniel.* Collection of the History of England by Samuel Daniel

Authors made use of in this Work,

- Daniel*, the fifth Edition, continued by *John Truffel*, London, 1685. folio.
- Defence of Hist.* A Defence of our ancient and modern Historians against the Cavils of a late Pretender to critical History by *Zachary Grey*, London, 1725.
- Dr. Duck.* *De Usu & Autoritate Juris Civilis Rom.* London, 1653.
- Dial. Scac.* *Dialogus de Scaccario*, published by *Maddox* in his History and Antiquity of the Exchequer, London, 1711. folio.
- Danvers's Abridg.*

E.

- Eadmer.* *Eadmeri Monachi Cantuariensis Historiæ Libri vi.* with *Selden's Notes*, London, 1623. folio.
- Eng. Tacitus.* *Cornelius Tacitus*, translated into *English* by several Hands, three Volumes, London, 1698. 8vo.
- Epinomis.* *England's Epinomis* by *John Selden*, London, 1683, bound up with his *Janus Anglorum* and other Tracts.
- Ethelwerd.* *Ethelwerd Patricius* his Chronicle published by *Sir H. Savil*, among the five Historians after *Bede*. *Francfort*, 1601. folio.
- Fleta.* A learned Treatise of the common Law, writ in *Edward I's* time, published by *Mr. Selden*, 1647, at London.
- Gildas.* *De Excidio Britanniaë*. 8vo.
- Glanvil.* A learned Treatise of the Law writ by *Ranulphus de Glanvil* in the time of *Henry II.* *Hoveden* calls him Chief Justice of *England*; but Judge *Hale* in his History of the Common Law, pag. 139. doubts whether the *Ranulph de Glanvilla*, who was *Jusitiarius Angliæ*, was the Author of this Law Treatise.

Authors made use of in this Work.

H.

Hagulfstad.

Hatchet. The Morals of Princes, of the Roman Emperors by Count *John Baptista Comazzi*, Historiographer to the Emperor; translated by *William Hatchet*, London, 1729. 8vo.

Hist. Com. Law. The History of the Common Law of England, supposed to be writ by Chief Justice *Hale*, Savoy, 1713. 8vo.

Hist. of Eng. History of England, 2 Volumes, London, 1715. 8vo

Hist. of Eng. under Stuarts. History of England during the Reigns of the Royal House of *Stuart*, by the Author of the Critical History of England, London, 1730. folio.

Hist. of Succesf. A brief History of the Crown of England, written for the Satisfaction of the Earl of *H-----* London, 1688-9, answered by Dr. *Brady* in his Tracts, pag. 339.

Hollinsbed. His Chronicle, London, 1577. folio.

Hovedon. Roger *Hovedon's* History published by Sir *H. Savil*, Francfort, 1601, in which Volume is *Malmesbury*, *Huntingdon*, *Hovedon*, *Ethelwerd* and *Ingulph*.

Hist. of Wales. The History of *Cambria* now called *Wales*, by *Caradoc of Lancarvan*, translated into English by *Humphrey Lloyd*, augmented by Dr. *Powel*, London, 1584. 4to.

I.

Jan. Ang. Mr. *Selden's Janus Anglorum facies altera*, English'd by *Redman Westcot*, London, 1683. folio.

Inspections of long Parl. Inspections into the Carriage of the long Parliament, London, 1656. 8vo.

Inst.

Authors made use of in this Work.

- Inst.* Sir *Edward Coke's* Institutes of the Laws of *England*.
First Part printed at *London*, 1670. folio.
Second Part printed at *London*, 1669. folio.
Third Part printed at *London*, 1669. folio.
Fourth Part printed at *London*, 1671. folio.

K.

- Kilian. Dictionarium Teutonico-Latinum, Cornelii Kiliani Dufflæi, Middleburgi, 1620. 8vo.*

L.

- Leicester's Life.* The Life of *Robert Earl of Leicester*, Favourite of *Queen Elizabeth*, drawn from Original Writings and Records, Printed at *London*, 1727. 8vo.
Leland. Itin. *John Leland's* Itinerary.
Lex Parliamentaria. Or a Treatise of the Law and Custom of the Parliament of *England*. By *G. P. Esq;* *London*, 1690. 8vo.
Lex Constitu. *Lex Constitutionis*, or the Gentleman's Law. By *Jacob. Savoy*, 1719. 8vo.
Life of Agricola. In the first Volume of the *English Tacitus*.

M.

- Mabillon. De re diplomatica. Libri VI.* By *John Mabillon*, *Paris*, 1681. folio.
Mackenzie of Precedency.
Madox. The History and Antiquity of the *Exchequer*. By *Thomas Madox*. *Lond.* 1711. folio.
Manwood. His Treatise of Forest Laws published by *William Nelson, Esq;* *Lond.* 1717. 8vo.
Mare Claus. The Dominion of the Sea. By *J. Sel-den, Esq;* *Lond.* 1663. folio.
Mat. Paris.

Authors made use of in this Work.

Maxims. Maxims of the Reasons of the Common Law of England. By *Edmond Wingate*. London. 1658. folio. *Mat. Westm.*

M A N U S C R I P T S.

MS. Life of St. Dunstan.

MS. Ld. Keeper. Several written Tracts bound up together, some of them transcribed by Clerks, and some in his own Hand writing.

MS. Journal 35 Eliz. A Manuscript Journal of the Parliament holden at *Westminster* 35th of *Elizabeth A. D.* 1592. And Serjeant *Yelverton's* Speech as Speaker of the Parliament, 36th of the Queen; and an Abridgment of the Proceedings of the general Assembly holden at *Edinburgh* the 12th of August 1639.

MS. Journal 18 James. A Manuscript Journal of the Parliament of the 18th of King *James*; the Speeches, Debates, Resolutions, Royal Letters, Messages, Petitions, Remonstrances, Protestations, &c. all at large, with a List of the Knights, Citizens and Burgessees.

MS. Parlt. A Manuscript in five Chapters.

First, the Name, Etymology, Substance and Effect of Parliament.

Second, the Quantity of Parliament.

Third, the Quality of Parliament.

Fourth, the Relation of Parliament.

Fifth, the Action of Parliament.

Sixth the Passion of Parliament.

MS. Speculum Regis. Archbishop *Islippe's* Advice to *Edward III.*, to regulate his Purveyors: Entitled, *Speculum Regis Edwardi.*

Authors made use of in this Work.

Moyle. *The Works of Walter Moyle, Esq;* 2 Volumes, London, 1726. 8vo.

Monast. Eng. *Monasticon Anglicanum.* And Abridgment of Sir *Wiliam Dugdale's Monasticon.* London, 1718. folio.

N.

Newton. *Chronology of ancient Kingdoms amended.* By Sir *Isaac Newton.* London, 1728. 4to.

Notitia Parl. *Notitia Parliamentaria,* or an History of the Counties, Cities and Boroughts of *England and Wales.* 2 Vols. By *Brown Willis,* 1715. 8vo.

O.

Orig. Jur. *Origines Juridicales.* By *William Dugdale,* Esq; London, 1666. folio.

P.

Parlt. Elsing. *The ancient Method of holding Parliaments in England.* By *Henry Elsing,* Clerk of the Parliament. London, 1675. 8vo.

Parlt. Summons. Perfect Copy of all Summons of the Nobility to Parliaments from the XLIX of *Hen. III.* to *James II.* Lond. 1685. By Sir *William Dugdale.* folio.

Plutarch.

Prideaux. *The original of Tiths* by *Dean Prideaux,* Norwich, 1710. 8vo.

Prynn's Parl. Writs.

Prynn's Power of Parliament. *Prynn's Tracts,* the sovereign Power of Parliaments, &c. London, 1643. quarto.

Sir

Authors made use of in this Work.

Sir J. Prife. The Description of *Wales* by *Sir John Prife* and *Caradoc of Lancarvan's Chronicle of Wales*. Translated into English by *Humfry Lboyd*, corrected and augmented by *David Powel, D. D.* London, 1584. 4to.

R.

Rapin. History of *England* by *Rapin Thoyras*. Translated by *Tindal* Vicar of *Great Waltham* in *Essex*; in a monthly Book No. 1. &c. 8vo.

Readings on Stat. Readings on the Statute Law. By a Gent. of the *Middle Temple*. London, printed for the Author, 1723. 5 Vol. 8vo.

Register.

Rel. Spelm. *Reliquiæ Spelmannianæ*, the Posthumous Works of *Sir Henry Spelman*, of the Laws and Antiquities of *England*. Oxford, 1698. folio.

Risden. His Survey of *Devonshire*.

Roman. Hist. Echard. Roman History from building of the City to the Settlement of the Empire by *Augustus Cæsar*. By *Laurence Echard*. Lond. 1695. 8vo.

Rosinus. *Antiquitatum Romanarum Corpus*, per *Johan. Rosinum* & *Thomam Dempster*. Colonie, 1619. 4to.

S.

Savil. *Sir Hen. Savil's* Edition of *Malmsbury, Huntingdon, Hoveden, Ethelwerd* and *Ingulph*. Francfort, 1601. folio.

Salkeild. Reports of *William Salkeild*, Serjeant at Law. *Savoy*, 1717. 2 Vol. folio.

Somner's Cant. Antiquities of *Canterbury*. By *William Somner*. London, 1640.

Somner.

Authors made use of in this Work.

- Somner Gavel.* A Treatise of Gavelkind. By *William Somner*. London, 1726. 4to.
- Somner's Dict.* *Dictionarium Saxonico-Latino-Anglicum.* By *William Somner*. Oxford, 1659.
- Speed.* The History of Great Britain. By *John Speed*, London, 1627. folio.
- Spel. Con. Tom. 1.* *Concilia, Decreta, Leges, &c. in re Eccles. Brit. Hen. Spelman.* Lond. 1639.
- Spel. Gloss.* *Glossarium Archaologicum, &c. Hen. Spelman.* London, 1664. folio.
- Spel. Works.* The English Works of Sir *Hen. Spelman*. London, 1723. folio.
- Stowe, Howes.* The Annals or Chronicle of *John Stow*, continued by *Edmund Howes*. London, 1614. folio.
- Strype's Reform.* Annals of the Reformation of the Church of England. By *John Strype*. Lond. 1709. fol.
- Style.* The Reports of *William Style*. London, 1658. folio.
- Selden's Privilege of Barons.* The Privilege of the Baronage of England when they sit in Parliament. By *John Selden*, Esq; London, 1689. 8vo.
- S. Taylor.* The History of Gavel-kind. By *Silas Taylor*. Lond. 1663. 4to.

T.

- Temple.* Sir *William Temple's* Works, 2 Vol. London, 1720. folio.
- Tit. Hon.* Titles of Honour. By *John Selden*. London, 1631. folio.
- Treasury.* The Royal Treasury of England, or Historical Account of all Taxes from the Conquest. London, 1725. 8vo.
- Tyrrel.* The general History of England, Vol. 1st. By *James Tyrrel*, Esq; London, 1697. folio.

Tyrrel.

Authors made use of in this Work.

V.

Verstegan. Restitution of decayed Intelligence in Antiquities. By *Richard Verstegan.* Lond. 1634. 4to.

W.

Wilkins. *Leges Anglo-Saxonicae Ecclesiasticae & Civiles, &c.*
By *David Wilkins,* D. D. Archdeacon of *Suffolk.*
London, 1721. folio.

Wood. An Institute of the Laws of England. By *Tho. Wood,* LL. D. 2 Vol. *Savoy,* 1720. 8vo.

E R R A T A.

- Page 107. line 29. for *Finebote,* read *Firebote.*
110. line 18. for *Læp* read *Lær.*
111. line 23. read *could not.*
114. line 11. for *edep nyce* read *edep bnyce.*
131. line 6. instead of 35. read 62.
138. line 27. instead of 36, read 66.
139. line 22. instead of page 38, read 68.
143. line 1. instead of page 43 to 48. read page 74 to 79.
171. line 13. instead of *Roldboran* read *Ræd boran.*
243. line last, for page 137, read page 137 to 141.
279. line 29. instead of *enter'd, and,* read *enter'd*
in the Parliament Roll.
281. line 26. read *made use of, &c.*

T H E

T H E
C O N T E N T S.

C H A P. I.

A*N Historical Account of the Government used
in this Island: Of its National Councils
and Parliaments.* Page 1.

C H A P. II.

*Decrees and old Statutes, Magna Charta, and Acts
of Parliament.* 87

C H A P. III.

*The Constituent Members of great Councils or Par-
liaments, and first of the Lords.* 162

C H A P. IV.

*The Procuratores of the Saxon Witenagemote;
and the Knights, Citizens, and Burgeses of the
Norman Parliaments.* 203

C H A P.

C O N T E N T S.

C H A P. V.

*Burghs or Boroughs, their Rise and Antiquity,
and when they first sent Burgesses to Parlia-
ment.* 220

C H A P. VI.

The Speaker of the Commons in Parliament. 246

V O L U M E II.

C H A P. VII.

Royal Stile in Acts of Legislature; Preroga-
tive Royal, in Parliamentary Affairs; and
Parliamentary Privilege of Lords and Com-
mons. 259

*The HISTORY of Court Baron and Court
Leet.* 525



THE



THE
ANTIQUITY
OF
NATIONAL COUNCILS
OR
PARLIAMENTS.

CHAP. I.

*An Historical Account of the Government used
in this Island: Of its National Councils
and Parliaments.*



IN this Essay, a short Sketch of the original Governments of the World, is a natural Introduction to the History of National Councils; the Members were at first barely Advisers, and Assisters, and afterwards Parties with the Princes in Legislature and Administration; and Laws made in them were by Consent of Prince and People, which was the Rule to both.

Adam the Father of Mankind was Prince and Pastor, the first Government was Paternal,
B Newton, 9.

The Antiquity of National

Digest.

nal, Nature imprinted in the Father a due Care of his Offspring, to feed them, and find them with Necessaries of Life, to educate them and in all Articles govern them: As the *Roman Civil Law* has it, *In potestate nostra liberi nostri sunt*: And the great Civilian *Ulpian*, Tutor to the Emperor *Alexander Severus*, says to the same purpose, *quicquid ex me & uxore mea nascitur, in potestate mea est*.

Newton,
286.

Noah the post-diluvian Father, had three Sons, from whom the World was overspread. Each of them was Pastor and Governour of his own Family. *Nimrod's* Rebellion against the Sons of *Noah*, forced them to leave off building the Tower of *Babel*.

Verstegan,
4-

From the Confusion of *Babel* the Head of each Language led away his Tribe to replenish the Earth; these peregrinating Heads of Tribes were the postdiluvian Patriarchs, the Royal Pastors, who fed and governed their Clans by the Law of their Will, having Power of Life and Death over their Children and Dependants.

As People increased into great Multitudes, farther Extension was necessary, and then Subdivisions were agreed on, one Father and another separating from the main Tribe went with their Children, Collaterals and other Dependants upon the Search for new Habitations, that had not been foraged, there to find fresh Pasturage for their Herds and Flocks.

The

The Father or Head of such subdivided Company, setting down in some unplanted Country, made it his own, made that proper which was before common and open to the first that should take Possession. And there the Patriarch was Lord of the Land, and absolute Governour of the People, amongst whom he divided the Land, and removed them at Pleasure. *Bedford,*
100.

These Patriarchates or Subdivisions from the main Stock, were in time over-run, and violently seized, and taken into the Dominion of a neighbouring strong Tribe: *Nimrod* is recorded to be the Raifer of a great Monarchy out of the Spoils of his Neighbours; he is called a great Hunter, over-running his Neighbours, and usurping their Rights; in modern Language a Tyrant.

The small Patriarchates being seized and taken by the more powerful Patriarchs, was the original Growth of the great Eastern Monarchies; the Princes whereof were as absolute in their Provinces as the little Patriarchs were over their Children and Collaterals, their Extention being the Effect of Conquest and not of Compact.

The Weight of Government of the great Monarchies being a Burden too great for the Execution of one, the Monarchs chose a Part of the People to be their Council of Advisers and Assisters in the Administration of the whole.

B 2

These

The Antiquity of National

These Counsellors were not at the Time I am now treating of, Assessors to the Monarchs, they having no other Share in the Administration, but such as was committed to them by the Monarchs, who received or rejected their Advice as they pleased, and removed them from Employments at their Pleasure.

When Monarchies grew large and far extended from their Courts of Residence, Lieutenants and Deputies were necessarily sent into the remote Provinces, with Instructions to govern and administer Justice to the People according to the oral Directions they received from their Monarchs, to which the People were to conform, as being the Will and Pleasure of the Monarch, revealed to them by the Lieutenants.

As the World improved, and Letters grew into Use, the Monarch, with the Advice of his Council, formed Rules for Government of his Dominions, and had them written, and Copies delivered to all his Lieutenants, Deputies and Judges, and then Laws became more certain than when they were carried to the remote Provinces, by the Memory only of the Lieutenants.

Thus Law or the Will of the Monarch, grew up by degrees from oral Orders, to Laws put in Writing, as an uniform Rule by which all the Provinces of a large extended Monarchy were to be governed.

The

The Battles between Monarch and Monarch, Patriarch and Patriarch, were at first entirely bloody; all being killed that fell into one or the others Power, they being under the Law of Nature.

The Monarchs and Patriarchs growing sensible of the Barbarity of killing all that were taken Prisoners in battle, for Preservation of their People, fell by degrees into Rules to be observed between Sovereign and Sovereign, which was the first Step towards the Law of Nations.

In private Offences and Trespasses between Man and Man, the Offender was at first punished according to the Will and Pleasure of the injured Party, there being no common Magistrate to determine private Rights or private Injuries, but the Partiality and Prejudice in the Punishers, cried aloud for Regulation, and from thence the Chief or Head of a Family took upon himself to arbitrate and determine all Differences amongst his Children, Collaterals and other Dependants. Such Determinations as were wise and just proved Precedents and Rules of judging, which from frequent Usage became of the Nature of Law, and so grew up municipal Laws by degrees.

Having given a short Sketch of the Patriarchical Governments and of the Eastern Monarchies, I proceed to the *Roman* Government from whence the Western and

The Antiquity of National

Northern Countries of *Europe* fetched their Improvements Military and Civil; where was the Senate a remarkable President for National Councils, being Parties to Laws made; from whence the *English* Constitution of King and Parliament seem to be in a great measure taken.

Moyls. 4. The Colony from *Alba-longa*, now *Albano*,
Dion. Hal. with *Romulus* at the Head of it, laid the
 lib. 2. p. Foundation of the *Roman* State: *Romulus*
 61. appointed the wisest and best esteemed of
Rom. Hist. the People to be his Counsellors and Ma-
 Each. 6. 8. gistrates, and out of these he formed his
 10. Council of State, called the Senate, the Mem-
 bers whereof from their Gravity and Under-
 standing were called *Patres*; and these had
 Portions of Land by Agreement wherein
 they had Property.

Parl.
Elsyng.
 322.

Romulus divided the People into three Parts or Tribes, that is to say Thirds, each Tribe was divided into ten *Curia* (i.e.) *Pagi* or Villages, and each *Curia* or Village into ten *Decuria*, and to each *Decuria*, was appointed a Chief, much of the Nature of our *Saxon* Headborough; the Tribe was much the same with our Hundred or Ward.

In the grand Council the Members gave their Votes according to the *Curia*, and what the major Part of the *Curia* agreed to, was taken for the Resolution of the whole Assembly or Council, each single Man having a Vote, and this made the *Comitia Curriata*;

riata; and the Law there made was called *Lex Curiata*. The Lands were divided amongst the Tribes, and they having Property were in a Federal Union with the Prince, jointly to assist one another in their several Properties, so was the first Roman Government founded in Property.

The Hundred *Patres* that *Romulus* made use of for his Senate to be his more immediate Advisers and Assistants in Affairs of the Government, he chose and made up the Number out of each Tribe and each *Curia*, such as were by him so chosen and enrolled into this venerable Assembly, he called *Patres Conscripti*. This Assembly of Counsellors was not to propose Laws; that Part *Romulus* retained to himself, and to the Senate it belonged to agree to and confirm what he proposed; such was also the Usage of our Saxon Kings in their Witengemots. Moyle, 3.

There were but two sorts of People, (*viz.*) *Patricians* and *Plebeians*, the former as Nobles were to take care of the religious Rights, bear Offices of Magistracy, administer Justice, and to be Assistant to the King as Advisers and Counsellors in all Matters of Government. Eng. Tacit. 3. vol. Annotati- ons. p. 107.

The latter, the *Plebeians*, were to till the Ground, feed the Herds and Flocks, and to follow Trades, and had no share of Administration in the Government; but the more firmly to bind them to free and voluntary Moyle. 6. 10.

The Antiquity of National

Obedience to the Laws made by *Romulus* and the *Patricians*, he allowed them to choose their own Patrons out of the *Patricians* to be their Friends, and to take care of their Interest in the Senate: And the Nobles gloried in nothing more than in the great Number of their Clients, whereby the Nobility and *Plebeians* were cemented together in Union and Interest; as were our *Saxon* Earl and Churl, our *Norman* Baron and his free Tenant; the Earl or *Thane* taking care of his Churl's Interest in the *Witengemot*, and the Baron of his free Tenants Rights and Liberties in the *Norman* Parliaments.

The Patrons in the *Roman* Senate undertook not only to take care of their Clients Interest there, but also to be their Counsellors in all Cases of Law wherein they were concerned, and present or absent, espoused their Interest with as much Zeal as if they were their Children.

And the Clients on the other side, out of their Earnings by their Labour, were to furnish their Patrons with Money upon many Occasions, as to ransom them or their Sons, if they were taken Prisoners in the Wars; and to contribute to the Charges of their Magistracy and other their honourable Employments. And to the same and other Ends and Purposes did the *Saxon* Churls and *Norman* Freemen pay Rents and Services to their *Thanes* and Barons.

When

When *Romulus* was in the Field in the Wars, he had a Deputy to preside and represent him in the Senate, and he was called *Præfectus urbis*, as our Kings in their Absence or Minorities had their Regents, and Protectors of their Realms.

Eng. Tacit.
v. 6. 7.
Military
Affairs.
P. 43, 44.

After Peace was concluded between *Romulus* and *Tatius* King of the *Sabines*, *Romulus* chose a Hundred of the most noble of the *Sabines* and added them to the Senate, which made the Number of the Members two Hundred. *Romulus* ruled despotically: His Successor *Numa Pompilius* made Laws in the Senate, and observed them. Afterwards *Tarquin* to ingratiate himself with the *Plebeians*, chose out a Hundred of them, who for Wisdom and Valour were most eminent, and added them to the Senate, which made the Number of Members three Hundred: Those of *Romulus*, his Election and Creation were as before said, called *Patres Conscripti*; and those of *Tarquin's* Election, *Patres minorum Gentium* (i. e.) Senators of a lower Rank. *Servius Tullius* with Advice of the Senate, made great Additions to the Laws of *Numa Pompilius*, whose Laws Kings themselves were to obey.

Eng. Tacit.
v. 1. p. 321.
Tallent's
Tables.
A.M. 3239.
Rom. Hist.
Each. 35.
Tallent's
Tables.
A.M. 3333.
4. Inf. 1.
Cicero.
lib. 1. Epist.
famil.

Eng. Tacit.
v. 1. p. 321.

Parl.
Elfing.
364.

After the Kings of *Rome* had forfeited their Reputation and Credit with the People, the Senators were not chosen by the Kings, but by the Consuls, Dictators or Chieftains,

The Antiquity of National

Chieftains, that were Governors of the People; (*i. e.*) the Nobles chose out of their own Body, such as were renowned for Wisdom, Virtue, Birth, or great Possessions, or had executed great Offices with Wisdom and Reputation.

When the *Romans* expelled their Kings, the sovereign Power was lodged in the Senate and two Consuls, in *Livy's* Words, *Omnia jura Regum tenere primi consules*. The Consuls proposed Laws to the Senate for Approbation as the Kings did before.

Moyle. 77.
Livy. lib.
2. cap. 1.

The Consuls were supplanted by the Decemvirs, who were chosen to govern the Commonwealth instead of Consuls, and it was under them that the twelve Tables were made, being composed out of the best *Grecian* Laws, particularly *Solon's Athenian* Laws. And all the Laws made by Kings were abolished in hatred of Monarchy; and the Decemvirs endeavouring to perpetuate their Government, which began to degenerate into Tyranny were abolished forever, and the Consulship restored, and tho' the Decemvirs were deposed, the Laws of the twelve Tables remained, they being approved and confirmed by the Senate, a *Senatus Consultum* having passed *Nemine contradicente* for the ratifying of them.

Each. Ro.
Hist. 110.
Eng. Tacit.
v. 1. p. 3.
322.
Talens's
Tables.
A.M. 3500.
Rofinus.
494.

This Revolution in the *Roman* State proceeded from a just Sense of Liberty; *Appius* and *Oppius*, the most arbitrary of the Decemvirs

Decemvirs were committed to Prison, and there were their own Executioners, the other Eight banished themselves, and then an Act of Indemnity passed for all that had been the Instruments of the Decemvirs Usurpation and Tyranny, and the Senate and Consuls were restored and reinstated, and the ancient Laws and Liberties established, and the Decemvirate wholly abolished.

The Decemviri out of the *Grecian* Laws and the Laws of *Numa Pompilius*, compiled a compleat Body of Law for the Use of the *Romans*, which was called the Law of the twelve Tables, which specifick Laws are lost, but the Effects of them are taken into the Civil Law, which according to *Cicero*, is founded upon the Law of the twelve Tables.

Tho' the Decemvirs were deposed for their personal Tyranny and Wickedness, yet that wrought not such a Prejudice in the Senate as for the Vice of their Persons, to reject the good and just Laws by them collected.

Having traced down the Method of the *Roman* Senate to the End of the Government of Kings, and to *Patres Conscripti*, and *Patres minorum Gentium*, a fair Prototype of our great Council of Lords and Commons, I proceed by gentle Approaches to the History of our *British* national Councils; but to supply the Want of *British* History, must have Recourse to *Roman* Authors, as had

Gildas. 3. had *Gildas*, our ancientest *British* Historian.

Cæsar. lib. 6. p. 115. *Cæsar* and *Tacitus* both agree that the Laws and Customs of the *Germans*, *Gauls* and *Britons*, were much the same.

**Charters*. The *Gauls* (the Ancestors of the insular *Britons*) says * *Cæsar*, held their national Council in the Borders of the *Carnutes* at *Dreux* near *Paris*: In that Assembly, the Prince proposed Matters to be weighed and debated by the Nobles and the Equites, in which the *Druides* presided as Chairmen, Speakers or Directors, to whose Care were committed the Laws there made, to be duly put in Execution by them in the lesser Courts of Judicature, held in each District once a Month, which was the Court of the Street or Village, the very Prototype of our Court Baron. In that Court of the Village, the *Druides* punished Criminals, and determined civil Differences between Man and Man in all Controversies about Right: The Refractory and Disobedient to their Judgments, they prohibited coming to their Sacrifices (they being both Priests and Lawyers) which was then looked upon as the greatest and most ignominious Sentence that could be given. The Person excommunicated, was called *Wolve's-head*, afterwards by the *Saxons*, that is, he was to be esteemed as common an Enemy as a Wolf, whom all sought to destroy. The Popes run Excommunication

Life of Agricola. 10.

munication to a greater Height, for the *Druides* excommunicated none but such under their Jurisdiction as disobey'd the Laws made by Prince and People, but the Popes excommunicated Princes and People, that would not conform to their Usurpations.

Tho' the *Britons* originally took their Learning from the *French Druides*, from whom also they learnt the Administration of Affairs both sacred and civil; yet before *Cæsar's* time, the *Druides* Schools in *Britain*, were grown into such high Esteem, from their Learning, Temperance, regular Discipline, diligent Application, and universal Virtue, that the *Gauls* sent their Youth of highest Birth and Quality into *Britain*, to be educated in the *Druides* Schools, where was taught the Theology, Astrology, and Geometry of that Age. There also was taught the Law then in Use, they being the sole Lawyers, out of whose Schools the Council annually chose Judges, who determined in all Cases both sacred and civil, amerced Criminals, and adjudged Recompence and Rewards to such as recover'd in civil Actions, which is an ancient Precedent for our modern Costs and Damages.

The old *Britons*, after the manner of their Ancestors the *Gauls*, held great Councils in each Principality, I make use of the Word Principality, because, *Cæsar* says in his time, *Britain* had no Monarch, but

Cæsar.

Cæsar.
lib, 5. c. 3.

but was governed by several Princes, as the Prince of the *Danmonii*, of the *Durotriges*, *Belgæ*, *Attrebatii*, *Trinobantes*, *Iceni*, *Silures*, and several other lesser People.

Bede, lib. 2.
cap. 2. and
13.

The *Britons* having no Monarch, in Case of eminent Danger and national Concern: The several Princes agreed to meet in a general Council of themselves and their Nobles, to consult about Measures of Safety and Preservation of the whole *British* Nation, as they did upon the Alarm of *Cæsar's* Preparations to invade them: when in a national Council they chose *Cassavallain* to be Commander in Chief of all the *British* Princes and their Forces: In *Cæsar's* own Words, *summa enim imperii, bellique administrandi, communi concilio, permessa est Caufbulano*: but he was not a Monarch, neither was there any at that time in *Europe*; he was only chosen to be Commander in that Juncture.

Life of
Agricola.
11. 12. 13.

At the second *Roman* Invasion of *Britain*, under *Claudius*, the *Britons* were divided in their Councils, did not agree to meet in a general national Council, as they did before in *Cæsar's* time; from whence they became an easier Conquest to the *Romans*, and their not joining in common Council, says *Tacitus*, contributed most to the conquering those warlike Nations, which, continues he, were formerly governed by petty Kings, that

that were unanimous against Invaders or common Enemies, but now divided into Faction and Parties, by some Ringleaders: Seldom above two or three Princes or Cities at a time, joined in concerting Measures to repel the *Romans*; so that fighting singly, they were universally overcome.

Tacitus speaking of the *Germans* and *Gauls*, from whom the *Britons* took their Model of Government, says *nec Regibus infinita potestas, de minoribus rebus Principes consultant, de majoribus omnes*, (i. e.) the Representatives of all in Council assembled.

The *Britons* called their Council *Kifritbin*, which in the *British* Language, imports to debate and treat upon Matters to be taken into Consideration for the publick Weal: The Members of their Councils were their *Edlins*, which were of royal or princely Race; and the Governors of Districts, and Lords of Villages: The Husbandmen and all the common People were esteemed no more than Servants, had no Interest in Land, being removeable at the Will of their Lord, they being Villains to their Lords, were not admitted to sit in Council.

The Sons of the Nobility were not admitted into Council, 'till they were esteem- *Cesar.*
ed of Age and Ability of Body and Mind to be serviceable in War, and then they were admitted by the Prince or President, delivering in open Council a Shield and
Partisan

The Antiquity of National

Partisan to the approved young Man, who from that time was esteemed a Knight or Nobleman, and a Member of the Commonwealth.

Jan. Ang.
32.

Epinomis
3.

The *Britons* always met in Council armed, none being allowed a Suffrage that had not a Spear or Partisan: When Matters proposed by the Prince were approved of, the Members clatter'd and rustled their Spears together, to show their Approbation, which indicated the most honourable and general Consent. If the Matter proposed was not liked nor approved, the Members shewed their Dislike or Dissent, by a clamorous or rude Noise, to shew their Contempt of the Matter proposed.

In the general Council, the *British* Laws were made, both for Preservation of Peace and Property, and the Execution thereof committed to the *Druides*, who were the Judges in Cases both sacred and civil. The *British* Laws were not put into Writing, but carried from the Council by the Memory of the *Druides*, and then the Law of the Land was *Lex non scripta* indeed; and such as had any Inclination to be learned in the Laws of the Land, went into the *Druides* Schools, where by frequent Repetitions, the *Druides* imprinted them in the Memory of their Pupils, as the oral Law or Cabala of the *Jews* was delivered to the People by the *Rabbins*.

The

The old *Britons* were very careful of domestick Peace, in preventing private Caballing and seditious Reflections upon the Administration; their Law allowing none but the Magistrates to talk of Affairs of the Commonwealth; and that only in open Council. They were also as careful to have early Intelligence of any Insurrection or Invasion; for every Person that heard any flying Report of warlike Preparations upon the Borders, or of any approaching Danger to the Commonwealth, was obliged by their Law to impart it to a Magistrate and to none else

*Bodin de
Repub. lib.
1. cap. 4.*

In early times, good Emperors and Kings did not wholly confide in their own and their Ministers Judgments in Cafes national and general, but wisely advised with the whole Nobility, or in other Words, with those that had a joint Interest with the Monarchs in Preservation of national Property; good Princes and good People's Interests being the same. The Monarchs of the World may be accounted of but two general kinds, *viz.* the Patriarchal and Elective; in the first Class, is included, all despotick Monarchs, in the latter, all that sprung from Leaders of peregrinating People, as were our Ancestors the *Scythians*, *Goths* and *Saxons*, who, when they found occasion to extend themselves, chose a Leader, as *Woden* was of the Herd that came into *Germany*, and *Hengist*,
C of

The Antiquity of National

of those that first came into *Britain*; who designing the Conquest of this Island, agreed with his Associates, what share of Administration and Property Prince and People should have, from whence his Assistants, as joint Undertakers, and their Heirs, were Sharers in Government and Land conquered from the *Britons*.

S. Taylor.
31.

During the time of the *Romans* Continuance in *Britain*, there were to be sure no national or provincial *British* Councils; but the *Romans* allowed them to determine their own civil Rights amongst themselves in the little Court or Council of the Village, and that was such a Favour as no other *European* Province of the Empire enjoyed, to judge their own Differences according to their own Law. But in the *Asian* Provinces it appears in sacred Writ, that the *Romans* allowed the *Jews* the Exercise of their Law in all but capital Cases; and therefore *Pilate* willing and desirous to save *Jesus's* Life, had them take him and judge him according to their Law, well knowing the *Romans* had not allowed them any Judicature in capital Cases. And in another place, *Then said Pilate take ye him and judge him according to your Law*. This Digression is only to shew, that tho' no *European* Province had the Favour of enjoying their own Laws, in relation to their particular Customs, which were of no moment to the *Romans*; yet the *Britons*

St. John.
18. 31.

Britons had, which may be laid to the Wisdom and Policy of the *Romans*, rather than to any Favour or Affection they had for the *Britons*, who tho' conquered, were a daring brave and valiant People, and seeing they suffer'd patiently their conquering Masters to erect Forts and Camps, and without Force paid Tribute; the *Romans* wisely determined to grant the *Britons* some particular Favours, rather than by despotick Rule, provoke a martial, daring, brave People; which Character of them shines through all the *Roman* Authors that treat of *Britain* and its old Inhabitants.

When the *Romans* deserted *Britain*, the Princes reassumed their ancient Form of Government. The Successor of every Prince claiming and taking possession of the Principality of his Ancestor, but not without Controversy, their * *Tylwyth* for want of * Genealogy. Writing being grown uncertain, during the four hundred Years and more that the *Romans* continued Masters of the Nation; besides the *Tylwyth* Singers, the *Bards* and *Druides* being discountenanced by *Claudius* and his *Roman* Successors, the Genealogies of Families were in a great Measure lost, and the Claims of the several *British* Princes so uncertain, that they fell into Bickerings and Battles amongst themselves about Rights of Succession and Limits of Dominions.

C 2

The

The Antiquity of National

Kilian.
voce. Edel.

S. Taylor.
49.

Gildas.

The Northern Hive of *Picts* and *Scots*, took Encouragement from the Contests amongst the *British* Princes, and invaded them with a numerous hungry Tribe, which brought the *British* Princes to agree upon a national Council of Princes, *Edlins* and other Nobles, to consult of proper Measures for preserving themselves from the Northern Inroad; and in this general Council, *Vortiger* was chosen to be Commander in chief of the *British* Princes and their Forces; which proving too weak to repel the Northern Incurſion, another general Council was ſummoned, wherein *Vortiger* was ordered and directed to invite the maritime *Saxons* (who even in the *Romans* time infeſted the Coaſts) to come to their Aſſiſtance.

The *Saxon* Auxiliaries, after a fifty Years War, became Maſters of the *Britons*, and Poſſeſſors of their Lands: During the Wars between the *Britons* and *Saxons*, Law laid aſleep, the Sword ſupplying its Place. But after the *Saxons* had made a compleat Conqueſt, they fell to the Work of Legiſlature, to make Laws for preſerving the Property they had obtained.

In time, ſeven *Saxon* Kingdoms ſprung up in *Britain*, *Hengiſt* erected the Kingdom of *Kent*, in the Year 457, and afterwards ſix others were erected; the times of their Erection and the Bounds of their Dominions being foreign to the Subject of my Eſſay, I

proceed to give an Account of the *Saxon Councils.*

And first, of the Name, they called their great Council, *Witenagemote*, a Word compounded of *Saxon* and *British*, the former Part of the Word being *Saxon* and the latter *British*; *Wita* is in *Saxon* a wife Man M.S. Parl. cap. 1. (i.e.) a noble Man: *Gemot* in the *British* Language is a Council or Synod, so *Witenagemote* is a Council of wise Men or noble Men. In the the ancient *British* Language, *Gamartha* or *Camartha* is the Name for a good and charitable Meeting of the rich Inhabitants of a Village, to contribute to the Relief of the Poor, and *Camote* is the modern *Welch* Term for any Court inferior to the hundred Court, as the Court *Leet* or *Friburgh*, where the Suiters assemble to do Justice to the People; which in preventing the People's Expence of travelling far from Home, is a charitable and good Work to the People. *Cantred* or *Cantref*, Sir J. Prife, 17. is the *British* Name of the Division of the Country, that is with us called the Hundred, and *Camote*, is what we now call Seignory or Manor.

The Act or Ordinance made in Council, the *Saxons* termed *Gerædnisse* (i.e.) a wife Law, from *Gerædod*, *doctus*, wife or well taught, which is very consonant or rather agreeable to the Term *Witenagemote*, an Assembly of wise or well taught Men.

The Antiquity of National

The Original of the *English* Government is much after the Manner of that brought into *Germany* by the *Saxons*, by the *Franks* into *Gaul*, the *Visigoths* into *Spain*, the *Ostrogoths*, and after them the *Lombards* into *Italy*. And the *English Saxons* formed the Model of their Government here, after the Manner of the *Goths* their Ancestors, who divided the Spoils of the *Roman Empire*, that they acquired, viz. by general Consent of the military Undertakers; who when Success attended assembled in Council, here by Vote to every one was allotted a Part in proportion to their Merit, in the Judgment of the Council.

The *Saxon* Conquerors of *Britain* were joint Undertakers, and divided the conquered Lands amongst themselves, in such Proportion as was agreed in the general Council of Commanders in the Undertaking. After the *Saxon* Kings embraced Christianity, they took an Oath to observe the Laws, at the time that they took the Crown and Government upon them, both King and People; each had their separate Liberty and Property. Liberty respects the Person, and Property the Estate.

The chief Commander soon assumed the Title of King, but far from the strict Sense of the Word Monarch, for he did not conquer the *Britons* with stipendiary Soldiers that were paid *cum solidis*, but by the

Councils or Parliaments.

23

the Assistants that came with him under no other Terms, than no Purchase no Pay, and all of them were to have a Share (by prior Agreement) in the conquer'd Lands, in such Proportion as was to be agreed in the Council of Undertakers; so were the Saxon Governments here founded in Property. The Assistants were *Comites Regis*, the King's Companions and Collegues, the Allodians of the Saxons. The chief Commanders or Leaders, afterwards called Kings, acted no ways in Government without the Advice of their Assistants in Conquest; the joint * Undertakers, who were at first by the Latin Authors termed *Capitanei*, as having a capital or original Right in the Shares of the Britons Lands; and these *Capitanei* were not only Sharers with the Kings in the conquer'd Lands, but also in the Administration of the Government, being Members of the King's great Council, and therein had a deliberative Authority in consenting to Laws and the highest Matters of State; they also had a judicial Authority, being the supreme Court of Judicature of the Nation.

* Col-1
legues.

During the Heptarchy, every Kingdom had its *Witenagemote*, wherein Laws were made for the Use of each particular Kingdom; and when Laws were made in one of the Kingdoms, that were remarkably wise and good, the rest of the Kingdoms received them,

C 4

as

as general Laws throughout the whole Nation, as the Laws of *Ethelbert* King of *Kent*, *Ina* of the *West Saxons*, and *Offa* of the *Mercians*, were received by the other Kings of the Heptarchy, they being made by Kings and *Capitanei*; all of the same Race received them from one another to shorten the Work of Legislature, and according to an ancient Historian, one of those Kings, from whom the rest received Laws, was stiled King of the *English Nation*. *Ethelwerd* called this chief King, *Anglorum Rex potentissimus*, who from his being esteemed the most powerful and wise, the rest of the Kings of the Heptarchy sent some of their *Wita's* to his *Witenagemote*, when new Laws were to be made.

Ethelwerd,
lib. 3.
cap. 2.

There being Codes of Law made by the several Kings of the Heptarchy in their own Dominions, I shall give a short Account of the way and manner of making those provincial Laws, before I come to the Laws of the great King *Alfred*, which were common to the whole Nation.

The ancientest Code of Law of the *Saxons*, that the rust of Time has not bereaved us of, is that of the first Christian *Saxon* King *Ethelbert* of *Kent*; and in this Essay I shan't offer at mentioning the particular Laws made by him in his *Witenagemote*, they being at large published by several learned Men, my Intent reaching no farther

ther than to shew how Laws were made and by what Consent and Authority.

ETHELBERT, Sirnamed **FREN**.

Ethelbert's Laws were made in his *Witenagemote* by the Advice of his *Wita's*, which were the landed Men, such as were original Sharers of the *Britons* Lands: *Bede's* Character of this King's Laws, I give in the venerable old Author's own Words.

Bede. lib. 2. ca. 5. p. 64.

Qui inter cætera bona, quæ genti suæ consulendo conferebat, etiam decreta illa judiciorum juxta exempla Romanorum cum consilio Sapientium constituit. Quæ conscripta Anglorum sermone hætenus habentur & observantur ab ea.

Tit. hon. 632.

Dr. *Duck* says such of the *Saxon* Kings as excelled others in Piety and Virtue, did in their Decrees and making of Laws often imitate the *Romans*, and particularly mentions King *Ethelbert*. The rest of the Kings of the *Heptarchy* received this King's Laws and enforced them in their Dominions.

Duck. P. 134.

The *Decreta Judiciorum*, the *Liber Judicialis* or *Judiciarius*, and *Dombec* in *Saxon* are all the same, and may be called the *Saxon* and first *Magna Charta*, being the certain *Dooms*, *Judgments* and *Sentences* affixed to *Crimes* by the King and his *Wita's* as a *Rule* and *Guide* to the *Judges* in punishing *Offences*.

The noble *Britons* that fled from the conquering *Saxons* into *Wales*, continued the Use

Bede. lib. 2.
cap. 2. P.
52, 60.

Tallent's
Tables.
A.M. 5022.
Tyrrel.
164. Sir J.
Prije. 19.

Use of great Councils there in *Ethelbert's* time, as appears from *Bede*, upon the Occasion of *Austin's*, being by King *Ethelbert*, made Bishop of *Camterbury* and Primate; who sent to the *Welch* Bishops, to acknowledge his Primacy, which they could not do, they answer'd, without the Advice and Consent of a provincial Synod; accordingly a Synod met of seven *British* Bishops, *Dinoth*, Abbot of *Bangor*, and many other learned Men: In this Council it was agreed that they could not acknowledge the Primacy of *Austin*, because they had a Primate in their own Country, the Archbishop of *Caerlean* upon *Uske* in *Montmouthshire*.

HLOTHAR and **EADRIC** Kings of *Kent*.

The next Code of *Saxon* Laws were made in the time of *Hlothar* King of *Kent*, with the Advice of his *Wita's* in Council assembled; which Laws were confirmed by the next King *Eadric* and his *Wita's*; which Confirmation being without any Alteration or Addition, that Code of Law is called the Laws of *Hlothar* and *Eadric*.

WIGHTRED King of *Kent*.

Chron.
Sax. 48.

The next *Saxon* Legislature held a *Witenagemote* at *Berghamsted*, where his Code of Law was made *Anno Dom. 694*. The Decrees were signed by the King, the Bishops

shops of *Canterbury* and *Rochester*, the Abbots, Abbeſſes, and many wiſe Men. Whether this Aſſembly at *Berghamſted* was a *Witena-gemote* of the Biſhops and Lay Nobility, or a Synod of Eccleſiaſtickſ only, makes no Alteration in my Deſign, which is to ſhew that our Kings always took the Advice of their People in making Laws either Eccleſiaſtical or Civil.

Spel. Con.
Tom. 1.
194.

INA, King of the *West Saxons*, by the Advice of *Genred* his Father, *Hedda* and *Erkenwald* his Biſhops, his Aldermen and other *Wit*'s in Council aſſembled made his Code of Law, for a Rule and Direction to his Aldermen and his other Judges, and the Meaſures of the People's Obediencce.

Archaion.
1.

In his firſt Law, the enforcing Word is in the plural Number, *Præcipimus*, (i. e.) We, the King and Members of the *Witena-gemote*, command the following Laws to be obſerved; from whence it ſeems the Nobles had not only a Share with the King in making the Laws, but alſo in the enforcing and putting them in Execution.

Ina was one of thoſe Kings of the Heptarchy that *Ethelwerd* called *Anglorum Rex primus* to whoſe Laws the reſt of the Kings of the Heptarchy agreed, and received them into their Dominions, and were in ſome meaſure Parties to them; for when Matters of national Concern were to be debated in the

Alfred's
Life. 15.

The Antiquity of National

the Council of that King to whom was conceded the Preheminence; the other Kings sent some of their Counsellors to be present there, to debate and consent, and bring the Laws there made into the Kingdoms from whence they were sent.

OFFA King of *Mercia* is reckoned among the Legislators, tho' no Code of his Laws is published by either *Lambert* or *Wilkins* in their Editions of the *Saxon* Laws; but Laws were made in his time and ascribed to him by *Alfred*, who towards the compiling his Code of Law, says he inspected the Laws of *Ina*, *Offa*, and *Ethelbert*, the first Christian *Saxon* King, who chose out the best and took them into his own Laws with the Advice and Approbation of his Council.

Offa held two provincial Councils one at *Verolam*, and one at *Colchyth*, in which latter were *Offa* and his Son, the King of the *East Saxons*, the King of the *West Saxons*, the King of *Kent*, the King of *Northumberland*, and three Kings of *Wales*, with fifteen Bishops and twenty Earls.

KENWULF King of the *Mercians*, held a *Witenagemote* in the Year 811, where a Charter was executed by that King, wherein he mentions the several Orders of Men that were present in that Assembly,
(*viz.*)

(viz.) *Merciorum Optimates, Principes, Comites, Procuratores, meique Propinqui*; of which I shall be more particular in the Chapter of the constituent Members of Parliament.

EGBERT held a *Witenagemote* at *Kingston*, where the Power of the Council appears to be very great; the Particulars whereof I reserve 'till I come to the Chapter of the Power and Privilege of Parliament.

Spel. Com.
Tom. 1.
340.

ETHELWOLF in the Year 855, held a *Witenagemote* at *Winchester*, where the tenth of the Kingdom was given to the Church by the King, *cum Thanis, Baronibus & Populo, infinita multitudine, qui omnes Regium Chirographum laudaverunt, Dignitates verò sua nomina subscripserunt*; what the great Number of People were, shall be described in the Chapter of the constituent Members of Parliament.

ALFRED, with the Advice and Consent of his *Wita's* in *Witenagemote*, made his Code of Law that was common to the whole Nation, and enacted, that a *Witenagemote* should be held twice a Year and oftner if need were.

Alfred's
Life. 157.
Mirror.
5, 6.
Daniel,
fol. 12.

The Heptarchy being reduced into one Monarchy by King *Alfred*, he had the Nobles of the Nation at his Court at the three

Tyrral.
261.

three

The Antiquity of National

three great Festivals of *Easter*, *Whitsuntide*, and *Christmas*, when they assembled in course; from whence it was called the Court *de more*: If the Affairs of the Nation required a Meeting at any other time, particular Summons were sent to the Nobles, and the cause of Summons made known, first in the Writ of Summons, and then at the Meeting.

Cot. Post-
hum. 44.

The *Witenagemote* and Court *de more*, in nothing differ'd as to Power and Proceedings; when a *Witenagemote* was summoned upon extraordinary Occasions that fell out between the great Festivals, the same Orders of Men were summoned that assembled in course at the great Festivals, *viz.* the Nobles, Bishops, Earls, and *Thanes ex more* assembled.

From the *Saxon* Court *de more* sprung the three great Courts of Chancery, King's Bench and Common-Pleas.

Alfred made Peace and League with *Guthron* the *Danish* King, and appointed the Bounds of his Dominions and gave him Laws, which were agreed to and confirmed by *Alfred's* and *Guthron's* Nobles; so that *Alfred* was supreme Lord and Legislator of the whole *English* Nation, tho' *Guthron* had allotted to him the Kingdoms of the *East Angles* and *Northumberland* for him and his *Danes*, that were agreed to remain in the Nation.

EDWARD

EDWARD the Elder, confirmed and enlarged the League between *Alfred* and *Guthron*, by the Consent and with the Approbation of his and *Guthron's* Nobles. Archaism 41.

But his Laws published for a Rule and Direction to his Judges, Ministers and People, seem by the Preface to be *Edictum Principis*, beginning with, *Ego Edwardus Rex, iis omnibus qui Reipublicæ præsumt, etiam atque etiam mando, ut omnibus (quoad ejus facere poterint) æquos se præbeant judices, perinde ut in * Judiciali libro Scriptum habetur, &c.* * Dombec. Tit. Hon. 632.

But 'tis to be observed, this positive Command of the King, has no relation to new Law, but an enforcing the old Laws in *Dombec*, which from three hundred Years Trial and Experience, were found to be good and wholesom, and received by all former Kings up to *Ethelbert*; in whose time was made that Directory of Law called *Dombec*, to which King *Edward* refer'd. What new Law was made by *Edward*, was made with the Advice and Consent of his wise Men in his *Witenagemote*, held at *Exeter*, as is plainly express'd in his Fourth Law, *de Pace. Edwardus Rex, Exonia conmonatus, ac Sapientium suorum usus consilio, &c.* Archaism 39.

ÆTHELSTAN's Laws are enforced by the King, with the authoritative Words *mando & præcipio*, yet in the Text, they are said to be made with the Advice of *Wulfstom* Archbishop,

Archbishop, the other Bishops, & *Dei Ministrorum*; this first Part of *Æthelstan's* Laws, being chiefly relating to the Service of God, there is no mention made of any Persons at the Council besides Ecclesiasticks, so that I take it to be an Ecclesiastical Synod.

Archæion
53.

This King's Laws made at *Granchester* in *Cambridgeshire*, were with Consent of the whole Nobility, as appears in the Conclusion, (*viz.*) *Decreta actaque sunt hæc omnia in celebri Gratanleano Concilio cui Wulfhelmus Archiepiscopus & cum eo Optimates ac Sapienties ab Æthelstano evocati frequentissimi.* The Members of that Council must be in modern Language, Lords Spiritual and Temporal.

The Laws made in this King's time at *Exeter*, are in the Law it self said to be made by the King and his *Wita's*.

Wilkins 65.
Defence of
Hist. 17.

This King held also a *Witenagemote* at *London*, wherein were made the *Judicia Civitatis Lundanicæ* by the Advice and Consent of the Bishops and *Gerefa's* (i. e.) Earls or Aldermen, to which Constitutions *tam Comites quam Coloni* (as in the *Latin* Translation) swore Observance: Tho' Earls and Churls are mentioned together in that Part relating to the Swearing to the Observance of those Laws; yet it is to be noted, that in the enacting Clause the Churls are not mentioned; the Words being, *Hoc est consilium quod Episcopi & Præfecti edixerunt:*
who

who were the Members of this King's *Witenagemotes* shall be more particularly mentioned in the Chapter of the Persons that the great Councils consisted of.

EDMUND held a Mycel Synod at *London*, of the great Ecclesiasticks and Laicks, by whose Advice and Consent his Laws were made. Wilkins 72

In the same Manner did the *Welch* make their Laws at this time; for in *Edmund's* time, *Howell Dba*, King of *Wales*, with the Advice and Consent of his Nobles of *Wales*, revised the old *British* Laws, when such of the old *British* Laws as he and his Council judged to be obsolete and useles were rejected, and such as were esteemed wholesom and suitable to the time, were retained in the new Code of Law then made; and this Collection, together with the Addition of some new Laws, was called the Laws of *Howel Dba*, as the Collection of the old *Saxon* Laws, with the Additions made in *Edward the Confessor's* time, was called the Laws of *St. Edward*. Archaion 57. Spel. Con. Tom. I. 408. Sir J. Prife, 53. Orig. Jur. 54.

At this time *Howel* made three Codes of Law.

The first, Of ordering the King or Princes Household and Court.

The Second, Of the Affairs of the Country and Commonwealth.

D

The

The Antiquity of National

The Third, Of the special Customs belonging to particular Places and Persons, which being approved by a general Council were proclaimed and writ in three Books, for publick Use.

ELDRED, Brother of King *Edmund*, was King during the Minority of *Edwin*, Son of King *Edmund*.

Eldred held a *Witenagemote* of the Nobles, in the Words of *Ingulphus*; *Rex Eldredus convocavit Magnates, (viz.) Episcopos Proceres & Optimates ad tractandum de publicis negotiis Regni.*

Coke 9.
Rep. Pref.

EDGAR, his Canons and political Laws are larger than any one of his Predecessors, which in the Preface are expressed to be made with the Consent of his *Wita's*, without any Epithet, which in *Latin* may be rendred, *consilio omnium Primatum*, both Spiritual and Temporal. This King was stiled *Pacificus*.

Wilkins 98.

At the end of *Edgar's* Laws in the *Cambridge* MS. is a Code of Laws or Canons stiled *Northumbrensum Presbyterorum Leges*, but whether they were made by the King and his Nobles in general, or by the King and his Ecclesiasticks only, don't positively appear, but the Title of them makes it probable the Compilers were Ecclesiasticks: But on the other side, these Laws are in the
Saxon

Saxon Language and Character, and secular Laws made by Lords Spiritual and Temporal, were in the vernacular Language, whereas Canons or Laws purely Ecclesiastick, and made by the Bishops and Clergy, were generally writ in the *Latin* Language and Character; the learned Ecclesiasticks being the People chiefly concerned with them.

In the Year 957, in the *Witenagemote* Chron. held at *Bradenford*, now *Bradford* in *Wilt-* Sax. 117. *shire*, *Dunstan* was nominated by King *Ed-* gar to the See of *Wigeraceaster*, now *Wor-* M. S. Life of Saint *cester*, with the Approbation of the *Wita's*, *Dunstan*, and soon after in the same Manner to the See of *London*, and A. D. 959. to the See of *Canterbury* in like Manner, of which more will be said in the Chapter of the Power of Parliament.

ÆTHELRED the Unready, his Code *Archaion* of Law was made by the Advice and Con- 88. sent of his *Wita's* in his *Witenagemote* held at *Wodestock*.

The League between *Æthelred* and *An-* *Archaion* *lave* was made with the Advice and Consent 90. of the Nobles of each King.

The *Liber Constitutionum* was made by *Coke, 9. Rep. Pref.* King *Æthelred*, with the Advice and Con- sent of the *Wita's*, and at the general Council at *Wantage* in *Berkshire*, was made the second Part of the *Liber Constitutionum* by the aforesaid Authority.

Spel. Con.
Tom. 1.
513.

Wilkins,
102.

This King also held a general Council at *Ænham* in *Hampshire*, where Laws were made by him and his *Wita's*, thus expressed in the first Article, *Hæ sunt constitutiones quas Angli Optimates & Consiliarii elegerunt & edixerunt*, these Members must be Nobles only; for none but them have ever been by way of Eminence called the King's Counsellors, as the Barons of latter Days have been stiled *Consiliarii nati*.

Archaion
94.

Wilkins
125.

The *Senatus Consultum de Monticulis Walliæ*, is in the Preface expressed to be made with the Advice and Consent of the *English Wita's* and the *Ræd-boran* of *Wales* (i. e.) Counsellors, from *Ræd*, Counsel, and *Boran* born, that is, a Person born with the Honour to be a Counsellor.

Coke 9.
Rep. Pref.

EDMUND, surnamed *Ironside*, held a *Witenagemote* at *London*, in the *Latin* Translation termed *Conventus Sapientium Spiritualium & Temporalium*; and in another *Witenagemote* of his, the Preface is thus, *Hæ sunt institutiones quas Edmundus Rex & Episcopi sui, cum Sapientibus suis instituerunt apud Culincunam*.

Archaion
97.

CANUTE, tho' the Son of a Conqueror, and chosen King by the *Danish* Army, proved a good King, in whose time were two Codes of Law made at a *Witenagemote* held at *Winchester*. The first which is chiefly

chiefly Ecclesiastick, begins thus, *Consultum, quod Canutus Anglorum, Dacorum & Norwegiensium Rex ex Sapientum Consilio ad Dei immortalis gloriam, Regiæ Majestatis ornamentum & Reipublicæ utilitatem, Natalitiis Domini nostri Jesu Christi diebus Vintoniæ sancivit.* Coke Rep. 9. Pref. 6.

And his Laws begin thus, *Hæc illa humana, atque politica sunt jura, quæ Sapientum adhibito consilio, per omnem Angliam observari præcipio.* Archaion 107.

This King in the fifth Year of his Reign, held a *Witenagemote* of Bishops, seven Dukes, seven Earls, many Abbots, *cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa, &c.* wherein the Abby of *Bury* was exempted from the Episcopal Jurisdiction of the Bishop of *Elmham*: What the *Populi multitudo* was, I shall give Account of in the Chapter of the constituent Members of the great Councils of the Nation. Coke 9. Rep. Pref. 7.

EDWARD the Confessor, that great and good Legislator, reigned in the Hearts of his People; the Love, Harmony, and good Agreement between him and the great Council of the Nation, produced such Happiness between him and his People, as to be the Measure of the People's Desires, in all succeeding Reigns. The Law and Government of King *Edward*, being often petitioned

oned for, and strenuously contended for, by the *English* and *Norman* Barons.

The *Saxon* Terms, *Witenagemote* and *Michel-Synod* began in this King's Reign to be laid aside, and instead thereof, after the *French* and *Romance* Dialect, to be called Parliament, from *Parler la ment*, he having the greatest Part of his Education in *France*.

This King's Code of Law, was called *Lex Angliæ*, and sometimes, *Lex Terræ*; being a Collection of the best of the *Mercian*, *West Saxon*, and *Danish* Laws, and King *Edgar's* Laws.

The Code of Law, under the Name of King *Edward's* Law, as published in *Lambert* and *Wilkins's* Edition of the *Saxon* Laws could not be penned in his time, for in the 35th Law, there is *Rex Edwardus propinquus noster*, and in the Chapter of *Danegilt*, King *Edward* is made to say, the Church-Lands were exempted from paying *Danegelt usque ad tempus Willielmi Regis junioris*. And 'tis more than probable there was not any authentick Copy of his Laws in *William* the Conqueror's time, nor his Methods or Rules of Administration certainly known, for if there had, the Conqueror would have saved the Trouble and Charge of sending Commissioners into all the Counties of *England*, to enquire and make Report what were the Laws and Customs of *England* in King *Edward's* days, and

Inst. 110.

Daniel
fo. 22.

Edmer
171.

Archaion
149.

Ll. Ed.
Conf. 11.

and from their Report cause the Laws of his Kinsman to be drawn up. The great Officers of State, Judges and Lawyers had King *Edward's* Laws in such high Esteem, that most of them had Copies thereof, who making marginal Notes and Observations upon many of the Laws, after Transcribers, added the Notes to the Text; and so might come in the Account of *Rufus*, his charging the Church-Lands with *Danegilt*, which is true History, but no Part of the *Confessor's* Law: After this Manner might Pope *Eleutherius* his Letter to King *Lucius* be thrust in, which is not of such Antiquity, therein being a *Norman* Term, (*viz.*) *Manutene-
nere*, which is a *Norman Latin* Law Term, not known in *Eleutherius's* time. And of the like kind is the Account of the *Hustings*, being formed after the Manner and in Memory *Veteris magnæ Trojæ*: And farther in King *Edward's* 35th Law, is inserted that *William* the Conqueror, order'd *Thomas* Archbishop of *Canterbury*, and Bishop *Maurice*, to write down from the Mouths of the Commissioners their Report of King *Edward's* Laws, whereas there was no *Thomas* Archbishop of *Canterbury*, either in King *Edward's* or King *William's* time, nor no Bishop *Maurice* in either of their Reigns, till in the last Year of King *William*, (*viz.*) 1087. *Maurice* was Bishop of *London*.

D 4

The

The Antiquity of National

Hovedon.
603.

The most correct Copy of King *Edward's* Laws, are those in *Hovedon* and *Knighton*, who transcribed (as 'tis generally believed) from the MS. of *Ranulph de Glandvil*, or an ancient Copy of his MS. Yet, even there, is the before mentioned Account of *Danegilt* of *William Rufus*, which to be sure could not be put in by the learned *Glandvil*, but must be a Note or Interpolation after his time, put into his Manuscript.

In the Laws of *Edward the Confessor*, as published by *Lambert* and *Wilkins*, is a heap of fabulous ill-digested History, from the time of King *Lucius* and King *Arthur*, down to the time of *Henry* the first; yet 'twas King *Edward's* Laws that the Barons so incessantly petition'd for, in the time of the first *William*, and boldly fought for in the time of his Successors.

Therefore the Contest was for something more valuable than his written Laws; (*viz.*) It was to be under the just and moderate Laws of the *Saxon* Kings, of which *the Confessor* was the last, whose Administration was according to the good old *English* Laws, without arbitrary Power, without arbitrary Resumptions and seizing of Freemens Estates: 'Twas his moderate legal Administration that the Barons so strenuously contended for. The *English jus innatum in meum & tuum*, the common Law of Right, which

Daniel,
fo. 43.

which flourished in the *Saxon* times, and tho' executed in one Part of the Nation after the *Mercian* manner, in others according to the *West Saxon* and *Danish* Practice; which several Forms all had the same View to Right and Justice, which three grand Forms were by *the Confessor* reduced into one, and became common Law to the whole Nation, the differing Penalties being ascertained.

During the time of the Kings of the Heptarchy and of the *Saxon* Monarchs of *England*, Laws were not committed in Rolls to the Custody of proper Officers for keeping Records, in certain appointed Places; the Ministers of State, Judges and Monks, who were several of them learned in the Laws, and Advocates in Trials, took Copies of the *Saxon* Statutes for their own Use and Direction.

Andrew Horn, who writ *the Mirror of Justices* in *Edward I.* time, says, the *Saxon* Statutes were not very current, because they were not put into Writing, and certainly published, as in his Chapter of the first Constitutions, made by the ancient Kings: Yet in his Chapter of Appeals of Treason, he has these Words, (*viz.*) Treason is set forth in Appeals in this Manner, according as it is found in the Rolls in the time of King *Alfred*. To put this Inconsistency into some tolerable Light;
Horn

Chap. 1.
 Sect. 3.

Chap. 2.
 Sect. 13.

2 *Inst.* 489. *Horn* made his Collection from Manuscripts, and made Additions of his own, and treats of *British* Laws as high as the *British* King *Arthur*; and where he says, how Treason is set forth in the Rolls of King *Alfred*, he speaks in the Words of the Authors of some of his old Manuscripts, who might have seen either Rolls or historical Accounts of *Alfred* and ancient Kings, tho' in *Horn's* time there were no such written Rolls upon Record, and *Horn* don't distinguish what he transcribed out of Manuscripts from his own Additions.

Buchanan
218.

The ancient Laws of *England* that have escaped the rust of time, are transmitted to modern times by the Monks: In the Abbies of Royal Foundation, one or more of the Monks were appointed to be Historiographers or Scribes, whose Business it was to register all new made Laws, with the Additions or Alterations made of the old ones, and to enter all notable Occurrences of every King's Reign; and at the Demise of every King, these Chronologers, or Annalists, were to exhibit their Collections before the new King, in the first *Witenagemote* of his Reign, where a Committee of the most learned Men were appointed to examine and correct those Registers; after which Correction, the King ordered them to be fairly engrossed and kept with the Archives of the Monastery where the Collection

lection was made ; and from that time they were esteemed authentick History, Chronicle, or Annals ; and from hence it is that in modern Historians we so often meet with Citations out of the Registers of *Canterbury, Ely, Abingdon, Glassenbury, &c.*

In the *Welch* Monasteries were Annals collected, corrected and kept. *Caradoc* Monk of *Lancarvan* in our King *Stephen's* time, collected the Successions and Acts of the *British* Princes after *Cadwaladar*, to the Year 1156. There were several Copies of these Collections kept in the Abbies of *Conwey* and *Stratfure*, which were yearly augmented with the current History of the Year ; and every third Year the Historiographers of the Abbies met at one of the Abbies and compared their Collections, and after Debate and Conference, fair Copies drawn and added to the Prior Collections. This Order of collecting, correcting and registering continued in those Abbies to the Year 1270 ; many Copies of this Register were taken, and translated into *English* by *Humphrey Lloyd* ; which History reaches from *Cadwaladar* to *Llewlewyn ap Gryffith* the last Prince of *Wales* of the *British* Race, who lost his Life and Principality to *Edward I.* in the Year 1282.

Hist. Wales
Preface.

In the Preface to the History of *Matthew Paris*, it is said that in each mitred Abby of the Order of *St. Benedict*, some Monks of

of Care and Ability, were appointed to register all notable Matters as occurred in the Kingdom; and after the Death of every King, the Memoirs of the Monks were laid before a general Chapter of the Order, to be corrected and reduced into a body of History of the Time, and then fairly engrossed in Books to be preserved in the Archives of the Abbies for the Instruction of Posterity.

In the general Plunder of the Abbies at the Reformation, most of the monastick Registers were lost or destroyed and with them dropt a great and valuable Part of the Annals of the *English* Church and State.

The Monasteries being sold or granted to Laymen, but few of them had a Taste to Learning, sufficient to make them careful to preserve the Registers of the Houses they took Possession of: The few Abby Books that were preserved have been great Helps to Antiquaries and Historians; 'tis from the monkish Historians that the Moderns have collected their Accounts of ancient times.

Lled. Conf.
17.

From the Chronicle of *Lichfield* we have an Account of King *William's* confirming the Laws of King *Edward* in his Parliament of Barons held at *London* in the fourth Year of his Reign, as they were reported to him by his Commissioners sent into each County; one of them is a self-denying Law
in

in these Words, (*viz.*) *Rex quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum & populum Domini, & super omnia sanctam veneretur Ecclesiam ejus, & regat, & ab injurijs defendat, & maleficos ab ea evellat. Quod nisi fecerit, nec nomen Regis in eo constabit, verum testante Papa Joanne nomen Regis perdit.* If King *William* then intended to govern *England* despotically, he surely would not have confirmed this Law.

In the last Year of King *William's* Reign he published a Code of Law of his own, and to make it go down glibly and be agreeable to the People, the Title is, *Hæ sunt leges & consuetudines quas Willielmus Rex concessit universo populo Angliæ post subactam terram. Eadem sunt quas Edwardus Rex cognatus ejus observavit ante eum.*

These Laws *Ingulphus* Abbot of *Crowland* carried to his Abby, there to be preserved in the Archives.

The ancient Lawyers *Glanvill, Brañton, Fleta, Thornton, Hengham, Horn, Britton, &c.* were beholden to Abby Registers in a great Measure for the old *Saxon* Statutes.

The ancient Laws and Customs of the *Saxons*, being revised by *Edward the Confessor* and his Parliament, those that were obsolete were rejected, and the useful retained and put in practice, as the Statute

The Antiquity of National

Laws of *Edward the Confessor*, which being made before time of Memory, past for the common Law of the Land, from *William* the first to King *John's* time, when the Barons prevailed with the King to have the good old Laws, to be drawn up in Form of a Charter, which the King confirmed, and so did his Son *Henry III.* *Edward I.* and succeeding Kings.

Ethelbert collected such *British* and *Saxon* Customs, as he with the Advice of his *Wita's* judged useful to his Kingdom of *Kent*, the other Kings of the Heptarchy, received *Ethelbert's* Digest of Laws, and some of them made Additions: *Alfred* Monarch of the whole Nation, revised the Laws of former Kings, and with the Advice of his *Wita's*, made a Code of Law to be common to the whole Nation: King *Edward the Confessor*, revised the Laws of his Predecessors and from *West Saxon: Mercian* and *Danelaw* with the Advice of his Parliament collected his Code of Laws, but all these Codes of Laws were but Shells or Cafes of Law, the Practice and Manner of putting them in Execution being a much greater Part of the Law than the Text; and those short Heads of Law being put in Execution by the Aldermen and Reves of the several Counties, which being separate Jurisdictions, independant on each other, caused great Variety in Decisions and
Judgments;

Judgments; and these local Laws, by the Wisdom of the Legislature and Learned, and just Judges have been improving and growing more uniform through many Ages before the Law arrived to that Beauty and Perfection, that with Admiration we now behold and justly adore: The Foundation is ancient and small, but by the Wisdom of Ages grown broad, so strengthened and enlarged as to be the strongest Fort in the Universe, against absolute Power, and seditious popular Tumults. The Foundation of this useful and beautiful Pile, was first laid and begun by the Companions of the *Saxon* Chiefs or Captains, who were afterwards called Countees, from sharing with their Captains Portions of the *Britons* Lands, afterwards called Counties; which they enjoying by original Contract with their Captains, afterwards called Kings, obliged them to observe such Laws and Customs as should be propounded and agreed in Council, they being Assessors to the King in the great Seignory, the grand Council of the Kingdom as their Vassals were to them in their lesser or subordinate Seignories. And as the Chiefs of the lesser Seignories made no Determinations without the Assistance and Concurrence of their Assessors or Suitors of Court; so the King made no new Laws or Determinations, upon the old Laws, without the Concurrence of his Countees, the Assessors

The Antiquity of National

Affessors or Suitors of Court of his grand Seignory. This sort of Government, these Liberties and Privileges, the Barons in the first *Norman* Reigns incessantly contended to recover and have confirmed to them; the good old Law of *England*, as used in the times of the *Saxon* Kings, only called King *Edward's* Laws, as being used in his time, the last of the Race of *Saxon* Kings. His moderate and just Administration being much more valuable than the fabulous History transmitted to us with the Title of King *Edward's* Laws.

The Courts *de more* of the *Saxon* Kings were held according to Custom at the three great Festivals of the Year, when the Nobles always attended the Kings at their Courts of Residence from King *Alfred's* time. Then was the State of the Nation weighed and considered, old Laws altered, amended or repealed, and new ones made. This Court was also the supreme Court of Judicature, where the King with his Noblemen heard and determined Appeals from the inferior Courts of Justice, as before mentioned.

That the Nobility might be under a Certainty where the Courts *de more* should be held, King *William* the Conqueror fixed the times of his Residence, to be at his Palace in *Glocester* on the *Christmas* Festival, and at *Winchester* on the *Easter* Festival,

val, and at *Westminster* at *Whitsuntide*; at which Times and Places his Barons and Tenants in *Capite* attended in Course.

To this purpose Sir *William Dugdale* in his * *Origines Juridiciales*, gives us the * pag. 157 Words of an old Chronicle writ in King *Stephen's* time in the *Saxon* Language and Character, which speaking of King *William* the First, that Part that relates to this Subject, is translated by Sir *William* into modern *English*, (*viz.*) 'Also, he was a Person of great Worth (or Honour) thrice he wore his Crown, each Year, as oft as he was in *England.*' At *Easter* he bore it at *Winchester*, at *Whitsuntide* at *Westminster*, and at *Christmas* at *Gloucester*; and then were with him all the wealthy (or potent) Men throughout *England*, Archbishops, Bishops, Abbots, Earls, Barons and Knights; that is, Tenants in *Capite* that held by Knight-Service, all magnificently feasted and entertained: To these Feasts were invited foreign Ambassadors, Ministers, and Strangers, to see the King's State and Splendor.

At these times the King was mild, free and indulgent, and the Noblemen took such Opportunities to obtain Favours, whilst the King was in his Mirth and Gaiety, that might have been rejected at the Council Table.

At this time the Tenancies in *Capite* were large and consequently few in Number, so that the Nobles that sat at the Council Table

E

with

with the King were not numerous to an Inconvenience, as they were afterwards, when the great Tenancies were split into small ones as they were in King *Stephen's* and King *John's* time, of which I shall be more particular when I come to the Reigns of those Kings.

When Affairs of State required the Meeting of a Parliament between the Meetings of the Courts *de more* at the solemn Festivals, Summons went out, and in the Writs the Cause of the Summons expressed, whereby the Members were prepared, and knew before hand what Business they were summoned to consult and advise of. And this was expressly provided for in the great Charter of King *John*, in these Words, ' And furthermore we shall cause in general to be ' summoned by our Sheriffs and Bayliffs all ' others that hold of us in *Capite* at a certain ' Day and certain Place, forty Days at least ' before such time of meeting, in all Writs ' of such Summons we will declare the Cause ' of it.' And Summons being thus made, the Business mentioned in them shall proceed according to the Advice of such as shall be present, altho' all that were summoned come not.

Brady
Append.
132.

Cot. Posth.
45.

King *William* at his Coronation swore he would preserve the *English* Constitution: he and his Successors held their Courts *de more* here without Interruption, 'till the Wars
between

Councils or Parliaments.

51

between *Maud* the Empress and King *Stephen*, made those regular Assemblies impracticable, which before were fixed in Custom Grace. Madox 10.

Henry II. and *Richard I.* their Reigns being more peaceable, the Bishops, Earls, and Barons *ex more* assembled; the King of course then reposed with his Imperial Crown, the Bishops and Nobles assembling, in recognition of their preobliged Faith and present Service, until the times of King *John*, when the Wars between him and the Barons, made such Assemblies unsafe, and the Grace of Kings and the Nobility's Allegiance being interrupted, Parliaments met only upon special Summons.

William the Conqueror appointed Commissioners to enquire in every County of *England*, and make Report of what were the Laws and Customs of the Nation particularly in King *Edward's* time, and their Report was made in the Court *de more in concilio Baronum*, and there confirmed. King *William's* own Code of Law by the first Part of the Preface, looks like *Edictum Principis*, (viz.) *Ces sont les Lois & les Custumes que li Reis William grantut a tut le Peuple de Engleterre apres le Conquest de la Terre*; but then the Conclusion of the Preface is, that they are the same Laws that *Edward* the King his Cousin observed before him; and MS. Parl; cap. 4.

Archæoth
159.

E 2

Edward's

Edward's Laws were, as said before, made with the Advice and Consent of the Nobles; and farther, there is the universal Consent of all Historians, that the Conqueror's Code of Laws was made *in concilio Baronum*, which implies the Laws were made with the Consent, if not with the Advice of the Barons; but this Code of Law made in the last Year of his Reign, widely differed from the Report made by the Commissioners of King *Edward's* Laws drawn up into Form of Law in his fourth Year.

This Code of King *William's* Laws, seems to be more after the Manner of the Law in *England* that went by the Name of *Dane Law*, that, in the King's Judgment appearing most conducive to keep the People in Obedience and prevent Rebellions and Insurrections; and besides it was more of the Manner of the *Neustrian* Laws, than were the *West Saxon* or *Mercian* Laws.

Edmer
171.

As to the civil Rights of the People, King *William* left them as he found them; they being in the time of the *Saxon* Kings, heard and determined in the Court Baron, Hundred, and County Courts, according to ancient Usage, which was confirmed by the King in his sixty third Law, in these general Words, (*viz.*) *Hoc quoque præcipimus ut omnes habeant & teneant leges Edwardi Regis in omnibus rebus, adauētis his quas constituimus ad utilitatem Anglorum.*

IA

In the Laws of King *William* there appear three principal Views.

The first plainly appears in his fifty eighth Law in these Words, *Statuimus etiam & firmiter præcipimus, ut omnes Comites, Barones, Milites & Servientes, & universi liberi homines totius regni nostri habeant & teneant se semper bene in armis & in æquis, ut decet & oportet, & quod sint semper prompti & bene parati ad servitium suum integrum nobis explendum & peragendum, cum semper opus adfuerit, secundum quod nobis debent de feodis & tenementis suis de jure facere, & sicut illis statuimus per commune Consilium totius Regni nostri, et illis dedimus & concessimus in feodo jure hereditario.* Note, this Law was made by and with the Advice of the common Council of the Nation (i. e.) the Parliament.

This Law settled his Militia in such an orderly and regular Manner, that he had always above sixty thousand Knights or Horsemen ready to serve him upon occasion.

A second Design that plainly appears in this King's Code of Law, is to enrich his *Norman* Companions and Assistants, that they might be the more able and ready to assist in suppressing Rebellions and Insurrections; and to make the Preservation of his Government their Interest, he made the Grants of Lands hereditary to them and their Heirs upon Condition of Service,

The Antiquity of National

Faith and Obedience; and that they should be free from all unjust Exaction and from all Tallage; and that nothing should be demanded of his military Tenants but their Service according to their Tenure, as appears in his fifty fifth Law.

And that these his *Norman* honorary Tenants should be safe in their Persons from the Assaults of the *English*, the King ordained in Parliament that forty six Marks should be paid into his Treasury, by the Hundred, where a *Norman* was found killed: Of which you may see the Particulars in his twenty sixth and fifty third Law.

The third principal View that appeared in King *William's* Laws, tended to the Encouragement of Husbandry, for the Benefit of his military Tenants, that their Tenants should pay them due Rents and Services according to Custom and Contract, to enable those Knights to perform their Services to the King; and for Encouragement of the Soc-men, it was ordained by the King with the Consent of his Barons, that as long as the Soc-men duly paid their Rents and performed their Services to their Landlords, they should not be turned out of their Farms, as particularly appears in his thirty third Law, which Law brought Socage Tenure into some degree of Certainty and Freedom.

King

King *William's* Charter wherein he separates the Ecclesiastical from the Temporal Jurisdiction, was made with the Advice of the Archbishops, Bishops, Abbots, Priors and Barons of the Kingdom, and in all his Reign he kept up a Shadow and Appearance of the old *English* Constitution; he stript indeed the *English* of their Possessions, when his *Normans* informed him that this and the other *English* Noblemen adhered to *Harold*; but as to his Acts of Legislature they were all made with the Consent of the Barons.

The first *William* being stiled Conqueror, I shall proceed to shew that his Reign was not carried on in a Manner of an absolute Conqueror, he holding the ancient Courts *de more* and Parliaments after the same Manner the *Saxon* Kings did.

In the first place at his Coronation he took the usual Oath the *Saxon* Kings did before him, (*viz.*) to protect and defend the holy Church, to govern the People according to the ancient Laws of the Realm, as used in King *Edward's* time, to do equal Right to all People, as well to the Poor as the Rich; and that he would be obedient to suffer Right as well as the People should be, &c. and the Barons in Parliament, were to determine all Complaints of the wrongful Acts of the King. Many *Norman* Laws and Customs were introduced in this King's

Mirror.
cap. 1. §. 1.

S Taylor.
56. 58.

Daniel,
73.75.101.

Reign, and in the Church some Novelties, not without the Consent of the great Ecclesiasticks, as Prayers for the Dead, and their Relaxation out of Purgatory, the Eucharist in one kind, the Worship of Saints, and some other Ecclesiastical Rights hardly known before in *England*; and considerable Alterations grew up in Fashions, military Discipline, Manner of living, Language, Writing, Fortifications, other Buildings, &c. and indeed with the *Normans* a good degree of Politeness invaded the Nation.

The County *Palatine* of *Chester* was a little Monarchy, within the great one of *England*: *Hugh Lupus* Earl of *Chester* created eight Barons, and held Parliaments of his own Barons and Tenants, and with their Advice and Consent made Laws for his County of *Chester*.

To return to this King's Administration, it must be allowed that in the Beginning of his Reign, his *Norman* Assistants made whom they pleased Adherents to *Harold* and got possession of their Estates, and went farther in confiscating *Englishmens* Estates than his Intentions; he being imposed upon by the avaricious misrepresentations of his *Norman* Companions, which Grievances he redressed, as soon as well informed, how he had been misinformed and misguided.

Some

Some of his *Norman* Barons seized and got possession of Church-Lands, which the King being well informed of, he religiously determined, that the Lands of the Church were not held in Right of the Churchmen, but of the Church, and therefore could not be subject to Confiscation for the Churchmens adhering to *Harold*.

Odo Bishop of *Beyeaux* and Earl of *Kent*, *Eadmer* 9. a great Man and Relation of the King's, by misrepresenting *Stigand* Archbishop of *Canterbury*, got possession of twenty five Manors belonging to the Archbishoprick, whereof the King being informed, he ordered a Commission to be drawn, therein authorizing some Bishops and Lay-Barons to summon the Sheriffs to attend them at *Penendon-Heath* near *Aylesford* in *Kent*; where upon a full Hearing, the Commissioners determined the Manors and Lands to be restored to the Archbishoprick.

Another such Commission was executed at *Kenetford* near *Newmarket*, where the Court ordered all Lands to be restored to the Abby of *Ely*, that they, the Abbot and Monks, or their Predecessors were possessed of at the Death of *Edward the Confessor*, whether they were in the Hands of *Normans* or *English*.

And the King granted a Commission to reinstate the Ecclesiasticks of the whole Nation in all the Lands they enjoyed in *Edward the Confessor's* time. In

The Antiquity of National

In the next place I shall show that the People of the Laity, had the Benefit of the old *English* Laws and the King's Justice, in restoring the *English* to their Estates that the *Normans* had unjustly dispossessed them of.

Hist. Com. Law. 96. *Sylas Taylor*, Judge *Hales*, and many other modern Historians of great Judgment and Credit, give Instances of Recoveries of Lands out of the Possessions of the *Normans*, that had made unjust Entries upon *Englishmens* Lands. The Rights and Inheritances of the *English*, *qua tales*, were not abrogated or impeached by King *William's* Conquest of *Harold*, for tho' it was *jure belli quoad Regem, sed non quoad Populum*. Of which the Case of *Warren* the great *Norman*, one of the joint Undertakers with Duke *William*, and *Sherborn* of *Sherborn* in the County of *Norfolk* is one Instance out of many recorded in *Domesday*.

S. Taylor,
65.

Wilkins
213.

The Castle of *Sherborn* was granted by *William* to *Warren*, yet upon the Allegation of *Sherborn* to the King, that he never did bear Arms against him, but was his Subject as well as the other, and held his Lands by that Law that the King had established amongst all his Subjects; the King gave Judgment that *Sherborn* should be restored to his Lands, and hold them freely of *William de Warren*.

And

And the King gave a general Order that all such as stood Neuter, should be restored to the Lands they had in King *Edward's* time, with this only difference, that whereas in the *Confessor's* time they were *alodium*, they should be held freely of the *Norman* Lords, and the Persons restored should be called *Drenges*, *Threnges*, or *Tbegnes*; (i. e.) Knights or Gentlemen that held Manors of a superior Lord.

Sommer
Gavel.
127.
Gerv.
Tilbury.

Gervase of *Tilbury* in his Dialogue of the Exchequer, and *Bracton*, both agree these *Drenges* were Freemen; and *Fleta* agrees with them in these Words, *Fuerint etiam in conquestu liberi homines, qui liberi tenuerunt tenementa sua per libera servitia, vel per liberas consuetudines, & cum per potentiores ejecti essent; postmodum reversi receperunt eadam tenementa sua, tenenda in Villenagio, &c.*

Madox.
Bract. lib.
1. cap. 11.
Fleta lib 1.
cap. 8.

Dr. *Brady* says the Account of *Sbarnborn* being restored to his Lands by King *William*, is a famous Legend and trite Fable; for says the Dr. no Person is recorded in *Domesday* to hold any Lands in *Sbarnborn* but *William de Warena*; be it so, yet *Sbarnborn* was restored to the Possession and Profits of his Lands as before, tho' *Warren* was recorded in *Domesday* to be chief Lord, and *Sbarnborn* held them freely of him; tho' the Dr. calls *Sbarnborn's* Case a Fable, yet in his History he mentions such like Restitutions to be made.

Brady's
Tracts,
11, 12. 27c.

Brady, \
140, 181.

Wilkins,
213.

William

The Antiquity of National

William Rufus hath no Place amongst the Legislators, at his Parliaments of *Winchester* and *Rockingham*, he made fair Promises to put the Government upon the same Basis whereon it stood before his Father's coming into *England*, and to govern according to the old Laws of *England*; but how well he kept his Promise, is out of the Intent of my Essay, to enter into the Detail of; only in general that Law lay asleep in his time; he governed according to his own Will, and Money governed him; he post-pon'd Elections to Bishopricks and Monasteries, to bring their Revenues into his own Coffers.

H E N R Y I. summoned *Clerus Angliæ* & *Populus Universus*, says *Mat. Paris*, to his Coronation; and his Laws begin in these Words, *Henricus Dei Gratia Rex Anglorum, Omnibus Baronibus & fidelibus suis Franciæ & Angliæ Salutem. Sciatis me Dei misericordia & communi consilio & assensu Baronum Regni Angliæ ejusdem Regni Regem coronatum esse, &c.* that is, was unanimously elected King, or his Accession to the Crown recognized by the Barons; tho' the Commons, as *Paris* says, were summoned to his Coronation, the Advice and Consent is appropriated to the Barons only.

Archaion
156, 175.
Daniel fo.
60.
Fadmer
55.

Archaion
157, 176. His great Charter of Confirmation of Liberties, the Laws of *Edward the Confessor*, together

together with the Additions made to them by *William I.* concluded with *Testibus Archiepiscopis, Episcopis, Baronibus, Comitibus, Vice-Comitibus & Optimatibus totius Regni Angliæ apud Westm. quando coronatus fui.* Daniel fo. 66. He kept the Courts *de more* at the Places his Father settled, but to please the People made Progresses and resided at several other Palaces.

This Charter was transcribed, one for every County, and each Duplicate sealed, and one sent to be preserved in the chief Abby of each County; and it seems the *Viccomites* of the several Counties were attending to lay out the Charters according to Order. His Code of Law has been interpolated by After-transcribers, as appears by the marginal Note to his fifth Law, as appears in the *Decretum* of *Gratian*, or else they are of latter Date. Laws were made in two other Parliaments of this King, besides that in which he was crowned, with the Advice of Bishops, Earls and Barons.

KING STEPHEN's Reign affords little Matter for a History of Parliament, he was elected King, and the Bishops swore Fealty to him so long as he should preserve the Liberty and Discipline of the Church. He took an Oath to govern according to Law but soon broke it.

HENRY

Daniel fo.

66.

Tit. Hon.

702.

Archaion

179.

Daniel fo.

66.

Brady 273.

Daniel fo.

69.

Vide K.

Stephen fo.

57.

Wilkins
318.

Daniel fo.
79, 90.

Brady 326,
378, and
Poffea.

Brady Ap.
41.

Hift. Com.
Law 138,
145.

Rapin N^o.
32. p. 243.

Daniel
fo. 83.

Daniel.
fo. 67.

HENRY the Second, surnamed *Plantagenet*, in a Parliament of Bishops and Barons, confirmed *Henry I.* his Charter of Liberties. At his Coronation he took the usual Oath from *Theobald* Archbishop of *Canterbury*; he reigned during his Mother's Life thirteen Years. His Parliaments of *Westminster*, *Clarendon* and *Northampton*, are very particularly mentioned in the Registers and Historians of those times, being called to redress the many Complaints of the Commons, against the Outrages and Exortions of the Clergy. Complaint being made to the King of above a hundred Murders committed by the Clergy, without any Punishment inflicted on them by the Archbishop or his *Suffragan* Bishops. Wherefore by the Statutes of *Clarendon* he restrained the exorbitant Power of the Ecclesiasticks, and the Exemption they claimed from secular Jurisdiction; of which I shall be more particular in the Second Chapter.

In the time of the two *Williams*, the King's Rents were paid in kind to the great Inconvenience of the Tenants that lived remote from the King's Court of Residence. In *Henry I.* time these Provisions were rated at certain Prices, and most of them paid in Money by Consent of Parliament; and as Money was more plentiful in *Henry II.* time it became near universal to pay Rents in Money.

RICHARD

RICHARD I. held five Parliaments of Bishops and Barons, but no Statute Laws made in his time are found either in Rolls or History; but many Edicts and Constitutions were by him made without any mention of Bishops and Barons Advice or Consent; he made naval Constitutions, and several Assizes, and raised Aids and Taxes without Authority of Parliament, tho' at his Coronation he had sworn, to observe the old Laws, and make good new ones.

Inspection of Long Par. 21.

Hist. Com. Law 7.

Brady 421.

King *Richard* had two elder Brothers, who dying without Issue in the Life time of their Father *Henry II.* he prevailed upon his Parliament to confirm the Succession upon *Richard* his third Son, willing to get a parliamentary Sanction, to supply the Deficiency of his Birth; for his Mother *Eleanor*, before she married King *Henry*, had been married to *Lewis VII.* King of *France*, who was living when *Richard* was born: *Eleanor* was divorced from *Lewis*, *causa Adulterii*, which not being a Divorce *a vinculo Matrimonii*, she could not by the Laws of *England* marry another Husband in the Life of *Lewis*.

Richard instituted a Body of naval Laws at his Return from the *Holy Land*, in the Isle of *Oleron*, as Sovereign Lord of the Seas, from the *British* to the opposite Coast.

More Clau. 386.

He constituted divers Rules for the Proceeding of his Justices in Pleas of the Crown

Orig. Jur. 8.

Hovedon
774.

Crown, and made an Affize of Weights and Measures, which was afterwards confirmed by *Magna Charta*.

Edit. Savil.

Brady 420.
448.

He made several Constitutions that chiefly tended to the filling his Exchequer, as the Affize of Weights and Measures, which yielded much from Forfeitures and Penalties levied; he ordered an Inventory of Escheat Lands: *Geoffry* Bishop of *Ely* dying intestate, he seized his Estate, which amounted to 3000 Marks in Silver and 200 Marks in Gold, besides Plate and Jewels; he had an Inventory made of Rents of Affize, of Wards and such like, from whence any Profit grew: he gave strict Articles of Enquiry to his chief Justice of the Forests. Besides Loss of Eyes and privy Members for great Offences; great Penalties were levied for lesser ones.

Brady 447. His Affize for Tilts, Tournaments and Feats of Arms was also made with the same View, to bring Money into his Treasury. By Charter he gave a Sanction to Tilts and Tournaments, and ordered the Practice thereof in *England*, and yet they were not to be performed without the King's Licence, for which each Combatant was to pay the Royal Collector thereto appointed, according to the Affize set by the King, (*viz.*) an Earl was to pay twenty Marks of Silver, a Baron ten, a Knight that had a Knight's Fee in Lands four Marks, and a dubb'd Knight

Wilkins,
348.

Co. Pl. b.
62.

Knight that had no Lands two Marks, and no body was allowed a Tilting, till he had obtained the King's Licence, and paid for it according to his Degree.

With the same View of Profit after his Chancellor was drowned and with him the Broad Seal lost, he caused a new one to be made; and all Charters or Confirmations of Charters made in the first Year of his Reign, were ordered to be brought to be renewed by his new Seal, for which he made People fine at his Pleasure.

Over and above the aforesaid Methods of filling his Exchequer, he raised several large Aids and Taxes, in the two Years 1195 and 1196; he raised five Shillings upon every Hyde or Carucate of Land to be paid within those two Years, which amounted to eleven hundred thousand Marks of Silver, which was more than five Millions of present Pounds *Sterling*; and these great Aids and Fines were some levied upon the People by Power of his Royal Authority only, and some with Advice and Consent of Parliament, as in his Parliament at *Nottingham*, two Shillings out of every Plowland.

The *Norman* Kings raised Aids and Taxes upon their Tenants in ancient Demean, without Consent of Parliament, those Tenants being subject to Tenure Payments *ratione tenuræ*; and uncertain Sums were often demanded and paid.

F

The

The Tenants in ancient Demean were not liable to Parliament Taxes, they paying Aids to the King *ratione tenuræ*, which they looked upon as a Privilege, being not charged so much as the People in general that were taxed by Parliament; and these Demean Tenants were not only exempt from parliamentary Taxes, but also from Attendance in Parliament, in regard of their not being interrupted in tilling the King's Lands, which yielded Rent for the Maintenance of the King's Household; but when the Kings extended their Prerogative so far as to levy exorbitant and unreasonable Taxes upon their Tenants, it became a general Grievance, and in some Measure redressed by King *John's* great Charter of Liberties, and more effectually by the Statute of the Twenty Fifth of *Edward I.* Chapter vi. and by the Statute *de Tallagio non concedendo* of the Thirty Fourth of *Edward I.* wherein is enacted in these short Words: No Tallage or Aid shall be taken or levied by us or our Heirs in our Realm, without the Good-will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other Freemen of our Land.

Tit. Hon.
707.
Baronage
143.

KING JOHN, (called *Lackland*) in the Second Year of his Reign held a Parliament, wherein was determined the great Controversy about the Barony that *William Mowbray*

bray claimed against *William Stutvil, consilio Regni & voluntate Regis*, says *Hovedon*.

In the Fifth Year of his Reign, *conven-
runt ad colloquium apud Oxoniam Rex &
Magnates Angliæ*, says *Matthew Paris*, and
in the same Year a Parliament was held at
Winchester. In his sixth Year a Parliament was
holden, and the Children of the Barons were
required by the King's Ministers for Hostages.

At this time the King's Army was sup-
plied by Knights that held Knights Fees of *Cor. Poff.*
14. the King in *Capite*, who were allowed to
infeoff their Followers with such Part as
they pleased of their own Portions; and
Money and Provision was assessed by Hydage
on the common People, with the Consent
of their Lords, who held in all their Seigno-
ries such arbitrary Right of Regality, that
to their Vassals (as *Paris* says) *quot Domini,
tot Tyranni*, and proved to the King so great
a Restraint and Curb of his Power, that it
was the King's great Care to curb and re-
trench the Force of that *Aristocracy* that was
like in time to overthrow the Monarchy.

Though former Kings had foreseen this
growing Danger betimes, yet none attempt-
ed a Remedy till this King, whose over-
hasty Undertaking of it brought upon him the
Barons Wars, together with his refusing to
confirm *Henry I.* his great Charter.

The Barons being thus exasperated, un-
der a Pretence of Prayer and religious Per-
formances *Brady*
49+

performances, met at *St. Edmund's Bury*, where they combined and agreed to force the King to confirm the great Charter of *Henry I.* which the Barons had received from *Stephen Langton* Archbishop of *Canterbury*.

In the Year 1215, the King keeping his *Christmas* at the *New Temple* in *London*; thither came the Barons to the King in their military Habits, requiring of him to confirm the Laws of King *Edward* and the great Charter of *Henry I.* The King surprized at their Manner of appearing before him, demanded time to answer till the Close of *Easter*; many things were proposed on both sides, and at length the King found Sureties, the Archbishop of *Canterbury*, the Bishop of *Ely*, and *William Martial* Earl of *Pembroke*, that at the Time prefixed he should with Reason satisfy them all; upon which the Barons and great Men returned home for that time.

Brady 495. In *Easter Week* the Barons and great Men met at *Stamford* with Horse and Arms; and having drawn into their Party almost all the Nobility of *England*, made up an Army of two thousand Knights, besides other Horsemen and Foot, all well armed.

Daniel fo. 142. At the same time the King was at *Oxford*, waiting for the coming of the great Men; on the *Monday* after *Easter* the confederated Barons rendezvoused at *Brackly* in *Northamptonshire*, to whom the King sent the
the

the Archbishop, the Earl of *Pembroke*, and other wise Men, to know what Laws and Liberties they desired to have confirmed: In answer to the Message the Barons delivered a Schedule containing their Demands; affirming that if the King would not confirm the ancient Laws and Customs therein specified, they would compel him by seizing his Castles, Lands and Possessions; which Demands were so exorbitant and the Threat so insolent, that the King absolutely refused to comply with them.

Whereupon the great Men chose *Robert Fitz-Walter* their General, calling him the Marshal of the Army of God and of the holy Church, and then marched to *Northampton*, and by the way of *Bedford* to *London*; from whence they sent Letters to the Earls, Barons and Knights that adhered to the King, that if they would not desert the perjured King, and join with them in asserting their Liberties, they would proceed against them as publick Enemies.

Daniel 10.
143.

These Threats drew from the King the Barons that had adhered to him, which Defection left the King hopeless, and induced him to send *William* Earl of *Pembroke* and other faithful Messengers to let the confederated Barons know he would grant them the Laws and Liberties they desired: Upon which a Meeting of King and Barons was agreed to be on the fifteenth of *June* 1215,

Brady 496.

Hist. Com.
Law 8.

F 3

at

Daniel fo. at *Running-Mead* between *Staines* and *Wind-*
143. *for*, where a Conference began between the
 Barons that adhered to the King and the
 confederated Barons, who were so superior
 in Number to the King's Barons, that he
 seemed to make no Difficulty of granting
 the Laws and Liberties demanded; which
 was drawn up as the confederated Lords
Rapin N°. thought fit, in two Charters, the Charter
15. pag. of Liberties of great Charter, and the o-
226, 242. ther, the Charter of the Liberties and Customs
 of the Forest.

Brady 498. The King farther conceded that the con-
 federated Lords should choose twenty five of
Daniel fo. the most potent Barons to be Guardians of
143. the two great Charters, and to compel
 the King's Justiciary, other Judges and Mi-
 nisters, to determine and act according to
 the Charters of Liberties, and even to compel
 the King if he should repent of his granting
 the Charters: And the King sent his Letters
 Patents to all the Sheriffs to cause all to
 swear Obedience to those Charters and A-
 greements.

These Charters were highly esteemed,
 they comprehending the principal common
 Rights of the Church, the Baronage, and
 Commonalty, and seemed like to be a last-
 ing Benefit, from the Authority the King
 gave to the twenty five Barons to have
 them duly observed.

But

But these Halcyon Days lasted not long, the King soon repented of his Confirmation of the Charters, and of the Authority he had committed to the twenty five Barons, and sollicitated the Pope to damn the two Charters; the Pope well relishing the King's Bribes, and always ready to embrace any Opportunity of incroaching upon the Rights of Princes or their Subjects, sent his Bull over with a Dispensation to the King and excommunicated the Barons; upon which they invited *Lewis* the Son of *Philip* King of *France*, under pretence of his being next Heir to the Crown in the Right of *Blanch* his Wife, Daughter to *Godfrey* Duke of *Britain*, *Arthur* her Brother being dead.

Daniel fo
144, 145.

The Pope sent Letters to the King of *France* intreating him not to suffer his Son to invade *England*, which was become a Fief of the See of *Rome*: To which the King of *France* replied, that the Kingdom of *England* never was, nor is, nor never shall be, the Patrimony of *St. Peter*; and that King *John* could not give away the Kingdom without Consent of the Barons, who are bound to defend the same. From the King of *France's* Answer, it may by Implication of Reason be thought, that he was of Opinion that King and Barons could alienate the Crown: *Philip* in exprefs Words says that King *John* was never lawful King of

Daniel fo
146.

The Antiquity of National

England, and if he were, he had forfeited the Crown by his murdering his Nephew *Arthur*, his elder Brother's Son; and if he was hereditary and lawful King of *England*, he could not alienate the Monarchy, and grant it to any other without the Consent of the Barons, who then were the only Members of Parliament.

Upon *Lewis's* Arrival at *London*, the Barons chose him King, he swearing to govern by the Laws of *England*, and they swore Allegiance to him; and he with the Barons made War upon King *John* to his Death.

Daniel fol.
147,

HENRY III. Upon King *John's* Death *William Martial* Earl of *Pembroke* Lord Marshal of *England*, calling together the Bishops, Earls, Barons, and great Men of the Kingdom, placed *Henry*, then an Infant of nine Years old, in the midst of them, and persuaded them to receive him for their King, he being wholly innocent of his Father's Faults.

Mat.
Westm.
375.

The Earl of *Gloucester* alledged, that it was not consistent with their Oath to *Lewis* of *France*, to which the Marshal replied, that *Lewis* neglected the *English*, to advance the *French*, and would be the Destruction of the Realm; and that he had broke his Oath which absolved them from theirs. With these and other Reasons, the whole
Assembly

Assembly were convinced, and unanimously cried out, *Fiat Rex*, and accordingly crowned *Henry*, and soon after compelled *Lewis* to renounce all Pretences to the Crown, and return to *France*. At this time, it seems the great Men understood the King's breaking his Oath, to absolve them from their Oath of fealty, and in King *Stephen's* Time the Bishops swore fealty to him so long as he should preserve the Liberty and Discipline of the Church, as before mentioned. Brady 273.

Henry was crowned at *Gloucester* the 28th of *October* 1216. (*coram Clero & Populo*) says *Paris*, and took the Coronation Oath; and by the same Assembly of Lords Spiritual and Temporal *William Martial* Earl of *Pembroke* was constituted Protector and Governor of his Person and Realm.

The Protector sent Writs to the Sheriffs of the several Counties, to summon the *Barons*, Knights, and Freemen to the County Courts to swear fealty, and commanded the Sheriffs to see the Charters of Liberties observed, and order'd the Justices Itinerant to give in charge King *John's* great Charters to King *Henry* in the Year 1223, being then 17 Years of Age, and in his third Parliament solemnly promised to maintain the Liberties of the *Barons* and People. Rapis
N^o. 16.
p. 285.
Brady 491.

In the Year 1225, in the 9th Year of his Reign and 19th of his Age, he confirmed his Father's Charter of Liberties and of the Forest Daniel fol.
151.

2 *Inst.*
proce.
Carte 10.

Forest under his Seal, and sent one into each County of *England*. And this Charter was witnessed by 31 Bishops and Abbots, and by 33 Lay-Barons, in his 4th Parliament.

Daniel fol.
 152.

In the Year 1227. The King held a Parliament at *Oxford*, where he declared he was of full Age, and would take the Administration of publick Affairs into his own Hands; and by the Advice of *Hubert de Burgh* his Justiciary, he cancelled and voided the Charters he had confirmed, alledging that his Confirmations were made when he was in Minority, and had no Power of his Person or Seal: This was his 5th Parliament.

Daniel fol.
 154. 155.

Hubert de Burgh's Advice so well pleased the King, that he made him Earl of *Kent*, which Advice, and the Reward he had for it, so highly displeased the *Barons*, that they never ceased from soliciting the King to degrade the Earl of *Kent*, which they obtained, and he was by the Consent of the King degraded in open Parliament. In his 6th Parliament in 1234, he held his 7th Parliament at *Westminster* to no purpose.

Brady 565.

In the Year 1237, the King being reduced to great Straits for want of Money, swore in Parliament to observe the great Charters, and thereby obtained a twentieth Part of Moveables.

In

In the Year 1244, the King demanded an Aid, and to incline the Parliament to grant one, promised to renew, confirm, and intirely to keep the great Charter of Liberties he had sworn to.

Daniel
fol. 158,
160, 162,
166, 167,
169, 172.

In the Year 1252. King *John's* great Charters were produced in Parliament, which the King again confirmed in Consideration of a Subsidy.

In the Year 1253, the Parliament granted the King an Aid, in Consideration of his again confirming the Charters of Liberties.

In the Year 1258, on *April 10th Hoke Tuesday*, a Parliament met at *London*, which was called *insanum Parliamentum*, where great Heats and Debates arose between the *King* and *Barons*, about Grievances in general, particularly, that he did not observe the Tenor of the great Charters, that he raised to Dignities his half Brothers against Right and Law, and advanced to great Riches, Poictovins and other Strangers; amongst whom *William de Valence* advanced to the Earldom of *Pembroke*, was complained of for his great Pride and Insolence.

Brady 623.

Daniel
fol. 175.

2 *Inst.*
226.
3 *Inst.* 2.

Simon Montford Earl of *Leicester* making his Advantage upon these Debates and Wranglings, complained very boldly to the King, appealing to the Parliament for Justice; upbraided the King that he promoted and enriched Strangers, and despised and wasted

Rapin
N°. 17. P.
394. 431.

Brady 607. wasted his own People, neglected his Subjects that faithfully served him, as he had charged the King six Years before; That he had not performed his Promise of rewarding him for his Service and Expences in *Gascoigny*; to which the King answer'd, that he wou'd not stand to any Promise made to one that proved a Traitor: The Earl replied and told the *King*, he lyed, and were he not a *King*, he would make him eat his Words.

Daniel
170.

These Heats and Wranglings continued till the second of *May*, when the *King* adjourned the Parliament to the eleventh of *June*, then to meet at *Oxford*; but before the Adjournment, the Barons promised to procure him a common Aid, if he would redress Grievances, and reform the State of the Kingdom according to their Advice: The *King* complied with the Terms, and granted that the State of the Kingdom should be rectified and reformed by twelve faithful Persons then chosen out of his Council, and twelve more to be chosen by the *Barons*, who should meet at *Oxford* at the time of Adjournment.

These twenty four had Power to choose four that were to choose the King's Council, which was to redress and amend all Matters appertaining to the King or Kingdom.

When the Parliament met at *Oxford* according to the time of Adjournment, the
King

King named his twelve, and the *Barons* chose their twelve. These twenty four chose four of their own Number who named the King's Council.

These twenty four great Men require the *King's* Confirmation of the Charter granted by *King John* his Father. *Brady* 627.

Secondly, They required that such a *Justice* be appointed as would do Justice to such as suffered wrong, as well to the Poor as Rich. *Rapin*
N^o. 17. P.
414. 433.
443.

Thirdly, That they should choose the *Justices*, *Chancellors*, *Treasurers*, and other *Officers* and *Ministers* from Year to Year for ever.

Fourthly, That they themselves or *Friends* should have the *Custody* of the *King's* *Castles*.

Fifthly, By *Edict* they made it *Capital* for any of what *Degree* soever, to refuse to consent to these *Things*; and against such the *Archbishops* and *Bishops* pronounced also *Excommunication*.

These twenty four ordained, there should be three *Parliaments* in a *Year*, one on the *Octaves* or eight *Days* after *St. Michael*; the second on the *Morrow* after *Candlemas*; and the third on the first *Day* of *June*.

At these stated *Times* all the *Kings* chosen *Counsellors*, *i. e.* *Barons* were to come though they were not sent to.

And

And the Commons were to choose twelve to represent them in these Parliaments, which twelve appear by the list to be all Bishops, Barons, and great *Tenants in Capite*.

These were called the Provisions of *Oxford* sworn to by the King, Prince *Edward* and the *Barons*.

*Brady*633.
Append.
223.

Writs were issued to four Knights of each County to enquire of Excesses, Injuries, &c. of Justices, Sheriffs, &c. by Juries and the four Knights, to make return of the Juries Verdicts under the Seals of the Knights and Jurors, the Knights to deliver the Verdicts in Parliament.

*Brady*630.

The Barons pursuing the Power they had got by the Provisions of *Oxford*, put Governors into all the King's Castles, named and constituted Justiciary, Chancellor and other great Officers, bound themselves by Oath to stand by one another, met in Parliament at the three times stated in the Provisions, took to themselves *Escheats* and *Wards*, and gave to their Sons and Relations all Churches in the King's Patronage; which with other violent Actions raised a War between them and the King, after he had in 1262. in Parliament, confirmed the Provisions of *Oxford*, and again in 1263, in which Year *Simon Montford* Earl of *Leicester* with other Barons seized the King's Castles, and afterwards seized the King and Prince *Edward*.

In

In the Year 1265, the fourty ninth of *Henry III.* was summoned the famous Parliament of Lords and Commons, whilst the King was in the Custody of *Montford*, therefore called *Montford's* Parliament. Par. Summons 3.

After the Battle of *Evesham* on the fifth of *August* 1265, the forty ninth of *Henry III.* wherein *Montford* was slain, the King's Affairs took a Turn to his Advantage; and by the Advice of Prince *Edward*, the King summoned a Parliament to meet at *Winchester* on the eighth of *September* in the same Year. Brady Tracts 144- Daniel fol. 131.

In the fifty second of *Henry III.* a Parliament of Barons only was held at *Marleborough*, where the great Charter was confirmed. The Members of this Parliament were such of the great Barons and Tenants *in Capite* as the King pleased to send Summons to. Marlbrige 52. H. 3. cap. 5. Daniel fol. 184. Camb. Brit. 109.

This long Reign of fifty six Years was for the greatest part taken up in the settling the Bounds between the Royal Prerogative and the Subjects Rights and Privileges, confirming former Royal Charters of Grace and Favour, and cancelling and recalling those Charters of Confirmation: And in the Barons refusing Aids, and often refusing to come to Parliament till they had Royal Promises of Redress of Grievances and Confirmation of Laws and Liberties.

ED-

Brady 2.
Vol. 3.
Daniel
fol. 186.

EDWARD I. a brave, great, and high-spirited Prince, is by all Historians extolled for an excellent Governor and good Legislator; he being in the Holy Land at his Father's Death, it was almost two Years before he came into *England*; on the nineteenth of *August* 1274, he and *Queen Eleanor* were crowned at *Westminster*.

In *October* following he issued out Writs to two Commissioners in every County, to inquire by twelve legal Men, what were his own Royalties and Prerogatives of his Crown, what Tenants he had that held *in Capite*, and Military Service; how many, and what Fees they held of him; how many Tenants he had in ancient Demean, how they behaved themselves, and in what Condition their Farms were. He also took care of the Subjects Rights, for the same Commissioners had Orders to inquire of Sheriffs, Coroners, Escheators, Bailiffs, &c. whether they had extorted Money from any Man by virtue of their Office, wronged any Man, or received Bribes.

At *Easter* 1276, he held a Parliament at *Westminster*, of Archbishops, Bishops, Abbots, Priors, Earls, Barons and Commons, wherein were made many excellent Laws, called *Westminster the first*, containing fifty one Chapters. The Commons were the small Tenants *in Capite* summoned in general by the Sheriffs.

In

In succeeding Years many Parliaments were holden, and many good Laws made.

In the twenty third of his Reign, a Parliament was summoned to meet at *Westminster*, and Writs sent to the several Sheriffs of *England* to cause two Knights for each County, two Citizens for each City, and two Burgeses for each Borough to be at the said Parliament, to consent and agree to such Things as the Earls, Barons, and Peers of the Realm should ordain; from this Year is to be dated the first regular Summons of Knights, Citizens and Burgeses to Parliament. Parl. Summons 7.

In the twenty fourth of his Reign, the Parliament of *St. Edmund's Bury*, granted the King an eighth Part of the Goods of the Laity, and the Clergy a Tenth. Parl. Summons 13.

In the twenty fifth Year of his Reign, a Parliament was summoned to meet at *Salisbury* at the Feast of *St. Matthias*, when the King demanded the Assistance of his Earls, Barons and Knights that held *in Capite* 20 l. a Year to go in Person into *Flanders*, or contribute to the Expedition. *Humphry de Bobun* Earl of *Hereford* and *Essex*, and Constable of *England*, and *Roger Bigod* Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and many other Knights refused to go or contribute, unless it was ordained by common Consent in Parliament. The Debate between the King and the Marshal Baronage 135.
Brady 2 vol. p. 55.
Antiquity of Parl. 89.

G

grew

grew very hot, the King told him he should go and command his Army in *Gascoyn*, which the Marshal endeavour'd to excuse himself from, in decent Expressions, professing himself ready to attend and serve the King in Person in the Kingdom of *England* as obliged by Tenure, and Allegiance, but
Inst. 69. was excused from being sent out of the
Brañton Realm by *Magna Charta*, Chapter *de liberis*
lib. 2. 36. *consuetudinibus*, which so enraged the King, that in his Heat, he said, By God, Sir Earl, you shall go or hang; to which the Earl replied, By the same Oath I swear, I will neither go nor hang, and went out of the Parliament-house without taking leave of the King. And then the King raised Taxes by his Prerogative; but the Marshal and Constable forbad the Barons of the *Exchequer* raising it, as contrary to Law, and it was not levied.

This Contest in Parliament made the King look upon *Magna Charta* to be too great a Curb upon the Royal Prerogative, he being forced to make his Expedition with mean Supplies, and little Assistance from his Barons and Knights; but before he returned from his Expedition, having duly weighed the Debate between him and his Parliament, and to avoid the Difficulties his Father and Grandfather labour'd under with their Barons, popularly made his Resentments submit to his Wisdom, and
 at

at *Michaelmas* in the same twenty fifth of his Reign, order'd a Parliament to meet at *London* in his Absence; his Son, afterwards *Edward II.* being appointed Regent, and sent over from *Flanders* a Charter under his Seal in Confirmation of the great Charters, which Charter is mentioned in the Statute-roll to be sealed at *Gaunt* in *Flanders* on the fifth of *November* in the twenty fifth of his Reign; and Duplicates to be sent to all the Counties and all Judges and Justices to observe the great Charter, which was to be read in all Cathedral Churches twice in a Year: And Excommunication to be pronounced against all Breakers of the Charters; and the King declared the Aids and Taxes he had raised without Consent of Parliament, should not be made a Precedent, and that for the future he would raise no Taxes without the common Consent of the Realm. Sir *Edward Coke* says, the Statute *de tallagio non concedendo*, was made in the thirty fourth of King *Edward*, as it is in the old Statutes printed by *Richard Totel*, 1556. The Difference in Time between *Walsingham* and Sir *Edward Coke* may be reconciled, that of the thirty fourth of the King being an Act made in Parliament; and that mentioned by *Walsingham*, being by Charter under the King's Seal as was the Confirmation of the two great Charters, in the

Parl. Summons 19.

Daniel fol. 196.

Brady 2 vol. P. 59.

Walsingham Hist. Eng. p. 73.

2 Inst. 532.

twenty fifth Year, in which Charter was the Clause of levying no Taxes without Consent of Parliament; both Charter and Act of Parliament agree in point of Liberty, and Authors only differ in point of Time.

This Charter of Confirmation, and the Pardon for the Constable, Marshal, Lord *Ferrers* and their Adherents, so composed all Differences, that the Laity regranted the eight Part of their Goods they had before given at *Bury*, and the Clergy their Tenth.

Daniel
fol. 200.

In the Year 1300 the twenty eighth of his Reign, he passed those beneficial Laws, called *Articuli super Chartas*, where the great Charters are again confirmed, and three Knights chosen in every County, to hear and determine from Day to Day in a summary Manner, all Complaints against the King's Ministers, as well as others that had offended against the Great Charters, without allowing the Leisure and convenient Time taken in Proceedings at Com-

4 *Inst.* 186.

Spel. Gloss
543.

mon Law. These Commissioners were called Justices of *Trailbaston*, who executed their Commission so hastily, without taking due Time to hear and determine; that many of their erroneous Judgments were reversed in the *Kings Bench*; which by Degrees lessened the Credit of their Proceedings and Judgments, and they were wholly drop'd in the beginning of *Edward III.*'s Time

Time; the last Commission of *Trailbaston*, that I have met with any where mentioned, being in the fourteenth of *Edward III.*

Statute Laws grew to a great Perfection in this King's Time, *Magna Charta* confirmed, and many new Statutes made, much to the Advantage of the People.

In 1326, the Parliament of *Westminster* assumed a most exorbitant Power, exhibited many Articles against *Edward II.* and in Conclusion, that he was not fit to govern; wherefore by unanimous Consent they agreed to depose the King, and elect his eldest Son *Edward* to be King: And the Archbishop of *Canterbury* makes a Sermon upon this Text, *Vox Populi, Vox Dei*, exhorting the People to invoke the King of Kings for the Prosperity of him that they had there unanimously chosen to reign over them. Some of the Barons and Commons were sent to the King, then imprisoned at *Kenelworth* Castle, to demand of him the Resignation of his Crown, which bitter Pill he being forced to swallow, thanked them for electing his Son. And *Trussel* a Judge, in form renounced all Allegiance to the King to the eternal Reproach of him, and the Parliament that sent him.

Daniel fol.
217, 218.

There appears in the Records a Difference between a great Council and a Parliament. *Edward I.* in his twenty fourth Year, summon'd *Magnum Concilium* to meet at *Newcastle*,

Parl. Summons 15,
39, 68,
124, 129,
217.

castle, tho' he had before in the same Year held a Parliament at *St. Edmunds*; and in his thirtieth Year he held a great Council at *Westminster*. *Edward II.* in the second Year of his Reign held a great Council at *Staunford*, and another in the sixteenth Year of his Reign at *Rippon*, and at *Sarum* and *Winchester* in the eighteenth. *Edward III.* held several great Councils; the Summons to that of the ninth of his Reign, the Form to the Archbishop, has, *cum quibusdam aliis praelatis, magnatibus & proceribus dicti regni nostri colloquium habere volumus & tractatum*. Whereas the Summons to the Common Council of the Nation or Parliament, the Words are general, *cum ceteris praelatis, magnatibus & proceribus*, To the above said great Council were summoned besides Bishops, Abbots and Priors, only five Earls, and eleven Barons, and no Commons. But to his Parliament of the same Year, besides the Bishops, Abbots and Priors, there were summoned eleven Earls, fifty nine Barons, and twenty three Judges, Serjeants, and King's Counsellors and Ministers, with the Barons of the Cinque Ports, Knights, Citizens and Burgeses. The Summons to the great Council was by Privy Seal to particular Persons: The Summons to the Common Council or Parliament was under the Great Seal to all the Barons, &c. The Conclusion of the Writ to the great Council was

¶ *Inst.* 110.

Parl. Summons 179,
181.

Parl. El-
syng 60.

Notitia
Parl.
XXVIII.
21:

was in these Words, viz. *Rex de avisa-
mento consilii voluit & mandavit custodi pri-
vati sigilli sui, quod literas seperales sub eo-
dem sigillo faceret Dominis prædictis diri-
gendas in forma prædicta.* The Writs of
Summons to the Common Council or Par-
liament was under the Great Seal to sum-
mon all Lords in general, and under the Pri-
vy Seal, to summon to a great Council on-
ly such as the King particularly mentioned.

C H A P. II.

*Decrees, and old Statutes, Magna Charta,
and Acts of Parliament.*

IN searching into the Antiquity of publick
Constitutions or Statutes, we can't find
any *British* Constitutions, the *Druides* who
were the Lawmakers amongst the *Britons*
never committing any to writing, instruct-
ing Youth in their Schools by Memory on-
ly, teaching them Religion and Law by fre-
quent Repetitions of their Laws both Sa-
cred and Civil; in which the *Druides* were
so learned, that the *Gauls*, says *Cæsar*, fetched
their Discipline from *Britain*.

From the old *Britons* to the *Saxon* first
Legislator *Ethelbert* of *Kent* being above five

G 4

hundred

The Antiquity of National

Bede lib. 2.
cap. 5.

hundred Years in this long Space of Time, the *Britons* had no publick Constitutions, but what they had from their *Roman* Masters; the *Saxons* being in *Britain* above a hundred Years, before *Ethelbert* set about the Work of Legislature; his Laws were called, says *Bede*, *Decreta judiciorum*, and written in the *English Saxon* Language, who to shorten his Work of Legislature took into his Code of Law several *British* Customs; and many *British* Terms are in his Laws.

The Laws of *Ethelbert* are the ancientest Acts of Parliament, the next were those of *Lothar*, and *Eadric*, *Wightred*, *Ina*, *Offa*, and *Alfred*; which last made Laws and Statutes for the whole Realm of *England*: He made a Collection of the best Laws of his Predecessors, which with the Addition made by him and his wise Men, go by the Name of King *Alfred's* Laws. Before I treat of the Laws made by King *Alfred* and his Successors that were Monarchs of the whole Nation, after the Heptarchy was brought under the Power of one King, I shall make a short Dissertation upon the three Codes of Law so often mentioned by the ancient Historians.

During the Continuance of the Heptarchy, Laws were made by *Ethelbert*, *Hlothar*, *Eadric* and *Wightred* Kings of *Kent*, by *Ina* King of the *West-Saxons*, and *Offa* King of the *Mercians*, and no other Kings
of

the Heptarchy made any Code of Laws at are preserved by Historians: If it be objected that none of the Kingdoms could regularly subsist without Laws suited to the Humours of the People and Situation of their Affairs; I answer, that the People of the seven Kingdoms were all of the same Race, and at first lived as Friends and Relations, united in one Bond of Alliance against the *Britons*; and those Kings that made no Laws in their Provinces, received and promulged in their several Kingdoms the Laws made by the other Kings that were Legislators.

But before *Edward the Confessor's* time, there arose a triple Distinction of Laws, *z.* the *West-Saxon* Law, the *Mercian* Law, and the *Dane* Law, which were different Laws in the Mulcts; the main Substance indeed of those several Laws being the same, they differing from one another chiefly in Amerciaments, Mulcts and Fines, for the Transgression of one and the same Law, according to the local Custom and Usage of the several Provinces; and it is to be understood in the Second Law *Archaism* of King *Alfred*, in the Case of such as violate Sanctuary, (*viz.*) *mulcta, vel ipsa cattis aestimatione, prout ejus gentis feret consuetudo, &c.* as the *Saxon* is render'd in *Latin* by *Lambert*. The learned Sir *Henry Belman* says much to the same purpose, for

for tho' (says he) the Nation was divided into many Kingdoms, yet were they all in effect one both in Manners, Laws and Language; and the uniting the several Kingdoms into one Monarchy wrought no great Change in Laws, for tho' there were the *West-Saxon* Law, the *Mercian* Law, and the *Dane* Law, whereby the *West* Parts of *England*, the middle Parts, and those of *Norfolk*, *Suffolk*, and the *North* Parts were severally governed, they were much the same and alike in the Course and Form of administering Justice; the several Codes or Digests of Laws very little differing, but in the Measures of their Amerciaments, Mulcts and Fines, in *West-Saxony*, *Mercia*, and the *Danes* Country. The *English* Fine called *Wite*, was 30 s. and the *Danish* Fine *Lakslight* 12 Ora's, i. e. 20 s. the highest *Wita* was the King's *Wite*, called *Full-Wite*, which was 20 Marks, which was 120 s. the Bishop and Earls *Wite* 60 s. the *Thane* or Barons *Wite* 30 Solids.

Wilkins
433.

Ll. William
Con. 64.

Ll. H. I. 51.

Nicol. lib.
vo. 1. 112.

The learned Bishop *Nicolson* carries this Matter farther, he won't allow there were such three Codes of Law termed the *West-Saxon*, *Mercian*, and *Dane* Law; for he advances, that the Translators of the *Saxon* Laws mistake the *Saxon* Word *Laga* or *Lage* for the *Norman* Word *Ley*, i. e. Law: For says he, the *Saxon* Word *Laga*, should be render'd in *Laiin*, *ditio sive provincia*,

a Country or District; and Instances in the Preface to *Ethelred's* Laws made (as in the original) æt ƳuberƳoƳe MƳpcena lanð æpƳep Angla lage, which *Lambert* (says he) falsely translates *Wodstoci Mercia, quæ legibus Anglorum gubernatur*; whereas says the Bishop, *Lambert* should have render'd, *quæ postea ditio Anglorum*; he instances in a like Mistake made in the Translation of *Cannute's* fourteenth Law, where on ðenalaga on Englalaga is render'd, *jure Danorum & Anglorum jure*, which says the Bishop should be render'd, *intra ditiones Danicas & Anglicas*. In the thirty fifth Law of *Edward the Confessor*, occurs, *erat lex Danorum, Norfolk, Suffolk and Grantabrigeshire, quam* (says the Bishop) *ab omni sensu alienum, pro Lex* (continues the Bishop) *itidem hic loci Ditio, sive provincia substituenda est.*

Archaism
110.

Archaism
119.

Tho' *Somner*, *Spelman*, and others learned in the *Saxon* Language, all agree that the *Saxon* Word *Laga*, imports Law, yet the Bishop may be as good a Judge of the *Saxon* Language as any of them; therefore I shan't pretend to make those Authors of greater Weight in the Case than the Bishop, but shall produce some other Laws wherein *Laga* cannot be the same with *Ditio*.

In the second Chapter of *Henry I.* his grand Charter of Liberties, are these Words, *murdra*

Archaism
176.

The Antiquity of National

murdra etiam retro ab illo die quo in Regem coronatus fui omnia condono, & ea que modo facta fuerint juste emendentur secundum Lagam Regis Edwardi; and farther on in the same Chapter, *Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus eam pater meus emendavit, consilio Baronum suorum*: The Reader, I conjecture, will not judge that the translating *Laga* Law in this Chapter is *ab omni sensu alienum*. If the Bishop had translated that Part of this Law relating to Murderers, I dare be bold to say he would not have render'd it, They shall be tried according to King *Edward's* Country: And in the latter Sentence (*Lagam Regis Edwardi vobis reddo*) I dare persuade my self that he would not have made the King so self-denyingly generous, as to give his People King *Edward's* County.

Archaion
130.

The sixth Law of *Henry I.* begins thus, *Regnum Angliæ trifariam dividitur in Britannos Britannia, in Westsaxam & Mercenos & Danorum provinciam: Legis etiam Anglicæ trina est partitio ad superiorem modum; alia enim Westsaxia, alia Mercena, alia Denelaga est.* The true Meaning of *Laga* here is so obvious as to want no Observation.

Dial. Scac.
30.

Hitherto I have produced only Laws to prove there were three Codes of Law in *England*, and shall conclude with one ancient Author, *Gervase of Tilbury*, who compiled

piled the black Book of the Exchequer in Henry II. time, in these Words, *propositis* (speaking of King William) *igitur legibus Anglicanis, secundum tripartitam earundarum distinctionem, hoc est Merchenlage, Westsaxonlage & Danelage, quasdam reprobavit, quasdam approbavit, &c.* from all which may be concluded, there were three Codes of Law amongst the Saxons, much the same in Substance, tho' remarkably different from one another in the Quantity of Amerciaments, Mulcts and Penalties, to which may be applied Ovid's Words,

————— *facies non omnibus una,
Nec diversa tamen, qualem decet esse sororum.*

Alfred made his Code of Laws with the Advice of his Nobles in his Court *de more*; ^{Archaion 22, 36.} wherein it is expressed that the King with the Advice of his *Wita's* revised the Laws of *Ina*, *Offa*, and *Ethelbert*; rejected such, as alteration of Time and Circumstances had render'd uselefs, and retained and enforced such as were judged useful and beneficial to the Nation; and this was before the triple Distinction of Law, for the Sword was the only *Dane* Law, till *Guthron* came to an Agreement with *Alfred*, and then grew up Customs in the *Danes* Country in some Articles different from the other Parts of *England*, which might properly enough
be

be called *Dane Law*, as being the Custom and Usage in the *Danes Province*, so *Dan-alaga* may be render'd *Dane Law*, (*viz.*) the Custom of the *Danes* in their District, so I think *Laga* may be render'd Law properly enough.

Archaion.
38.

Wilkins 48.

Bede.lib.2.
cap. 5.

Spel. Con.
Tom. 1.
pag. 127.

Edward the Elder in the Preface to his Laws, gives strict Command to his Judges, to do equal Right to all People, according to the Book of Laws, there called *Dombec*, which *Lambert* renders in *Latin*, *Liber judicialis*, and so does *Wilkins*; whether this *Dombec* be the same that was made by King *Ethelbert*, and called by *Bede*, *Decreta judiciorum*, I won't venture to determine. To be sure, the *Dombec* mentioned by King *Edward* must be a Book of legal Dooms or Judgments that was standing Law in his time; and the *Saxon Dombec* and *Bede's Latin Decreta judiciorum*, are so congruent, that in all probability they were the same, that is, the Dooms and Judgments set upon Criminals by the Code of Law made by King *Ethelbert* and his Council of wise Men: The short Capitulars or Heads of Laws in that Digest, may properly enough be termed the Book of Dooms, the whole Eighty Nine Capitulars being only so many Mulcts, Fines or Penalties set upon the Persons guilty of the Crimes therein marked for Punishment, and no civil Rights therein mentioned.

The

The Laws of King *Ethelbert* were of the nature of the modern Statutes or Acts of Parliament, they being made by the King with the Advice of his Bishops and Nobles assembled in common Council.

The next Code of *Saxon* Statutes was that of *Lothare* in conjunction with *Eadric* King of *Kent*, which in the Preface is said to be made with the Advice and Authority of his wise Men *i. e.* Nobles. *Spel. Con.*
Tom. 1.
pag. 152.
Wilkins 7.

These Statutes contain Mulcts, Fines, and Penalties to be inflicted upon such as are guilty of Crimes and Offences, against God or Man.

The next *Saxon* Statute Laws were made in the fifth Year of the Reign *Wibtred* King of *Kent* at *Berghamsted*, with the Advice and Consent of his Bishops and Nobles, in Confirmation of the former Laws of *Kent*, with some Alterations and additional Penalties; and therein ordained that the Church shall be free and enjoy all its Rents, Revenues and Privileges, and that the King shall be duly honoured, and publick Prayers made for him in the Churches. *Wilkins 10.*

The next Code of *Saxon* Statutes were made by *Ina* King of the *West Saxons*, with the Advice of *Cenred* his Father, *Hedde* and *Erkenwald* his Bishops and the rest of his Nobles. *Spel. Con.*
Tom. 1.
182.
Wilkins 14.

These Laws prohibit doing any secular Work on *Sundays*, that the Priests shall observe *Archaion.*
1.

observe their Rules, that Infants be baptized within thirty Days after they are born; that the *Cyricseat* or Church-Rent be paid at the Feast of *St. Martin*, that he that is guilty of Manslaughter and flies to the Church and takes Sanctuary there shall save his Life, and he that deserves whipping shall be excused from Stripes. From this Law it appears that the Privilege of Sanctuary was so early allowed in the *British Church*.

This King's Laws consist of seventy seven Capitulars, which are too many to be particularly mentioned in my intended Brevity.

Offa King of the *Mercians*, was a Legislator as appears by *Alfred's Code of Laws*, wherein the King says he collected them out of the Laws of *Ina*, *Offa*, and *Ethelbert*; but as there is no entire Code of his Laws transmitted down to us, I proceed to King *Alfred*,

Archaion

15.

Wilkins 28.

Spel. Con.

Tom. 1.

354.

Alfred made two Codes of Law, the one Ecclesiastical and the other Secular. His Ecclesiastical Laws begin with the Ten Commandments, which he enforces, and also several other divine Laws which he took out of *Exodus* and *Leviticus*, without any Assistance in the Laws expressed, from his great Ecclesiasticks. But his Secular Laws were made with the Advice of his Council of Spiritual and Secular Nobles,

which

which he commanded to be observed by all *Englishmen*, he being Monarch of the whole Nation.

This King's Secular Laws are Forty, and tho' he says he collected them out of the Laws of former Kings, yet there appears to be a great deal of new Law in his Statutes, which were very wholesome and good Laws, highly esteemed by the Nobility and People.

Noblemen and Gentlemen had peculiar Privileges appropriated to them, as appears by his thirty sixth Law, in relation to Breach of the Peace. The Fine for Breach of the Peace in the King's City or Town of his own Demesnes, was 120 Solid, to be paid to the King; Breach of the Peace in the Archbishop's Town, was 90 Sol. to be paid to him; in a Bishop's or Alderman's Town 60 Sol; in a Twelfthindman's Town, that is a Man of twelve hundred Shillings in Estate, and so valued in the Laws of Head-money, the Mulct was 30 Sol. and in a Sixthindman's Town 15 Sol. The Bishops, Aldermen, and *Thanes*, had Towns of their own; and for Breach of the Peace there, being a Damage done to them or their Tenants, the Law was highly just in giving the Recompence to the Party grieved by the Offence. These Privileges, Noblemen and Gentlemen enjoyed till the time of the first *Norman King*,
H when

when Fines for Breach of the Peace were remitted into the King's Exchequer.

11. *Alfred*
37.

This King by Law entailed hereditary Land, therein called *Bocland*, that it could not be alienated out of the Family, which is an ancient Precedent of Estates in *Fee-Tail*, which Law was confirmed and enforced by *Edward I.* by the Statutes of *Westminster* the second, and continued Law till *Henry VII.*'s and *Henry VIII.*'s time. The curious Reader may see the Detail of *Alfred's* wife Laws, in *Lambert's* and *Wilkins's* Editions of the *Saxon* Laws.

13. *Ea. 1. 1.*

Alfred made Peace with *Guthbron* the *Danish* King, and a short Code of Law was made between the two Kings with the Advice and Consent of the Nobles of *England* and *East Anglia*; and in all Cases not provided for in that League, *Guthbron* and his *Danes* were to observe *Alfred's* general Laws of *England*.

Edward the Elder made a few Laws, chiefly commanding his Aldermen and Judges to observe the Rules in *Dombec* before-mentioned.

Edward confirmed the League made by his Father *Alfred* and *Guthbron*, and that was enlarged by *Edward* and *Guthbron*, with the Advice of the Nobles of both Kings.

Athelstan in his Parliament at *Greatanly*, made many good Laws by the Advice and Consent of *Wulfbelm*, his Archbishop, his other

other Bishops, Ecclesiastical Dignitaries, and Lay Nobility.

The most remarkable of his Laws are those of Mints, Larceny, Head-money, and Militia: He ordains that the Money throughout all *England* shall be of the same Standard and Weight; and if any Minter makes Money baser than the Standard or less than the established Weight, his Hand shall be cut off; and then ordains in the same Law, that there may be at *Canterbury* seven Moniers, four for the King, two for the Bishop, and one for the Abbot: At *Rocheſter* three, two for the King, and one for the Bishop: At *London* eight, and in other Cities and Castles in the Law mentioned, certain Numbers of Minters: And that no Money shall be coined in any other Places but in Cities, Burrows, or Castles.

The settling a Militia according to Mens Estates in Land, is as old as this King's time; for his sixteenth Law commands that Land Owners shall have always ready two Horses well caparison'd for War, and Riders to mount them, for each Plow-land.

A Valuation was set upon every Man's Head in his Laws, from the King to the Peasant inclusive. He that kills a Man, shall pay the Value of the slain Man's Head, as set in this King's Law: Punishments were mostly pecuniary at this time.

Wilkins 70. In this Kings time, Laws were made at *Greatly, Exeter*, and at *Thunresfield*: And the *Judicia civitatis Lundoniæ*, wherein the King commands with the Assent of his Nobles, that no Person shall suffer Death for a Theft where the Value of the Things stolen are under twelve Pence, which remains the Measure between grand and petty Larceny.

Sir J. *Prise*, 53. About the Year 940, *Howel Dba* King of *Wales*, held a Parliament of his Prelates, Nobles, and great Men of *Wales*, at his Palace called *Y Tvy Gwyn ar Taf*, i. e. the white House upon the River *Taf*. There, out of the Members of that great Council, he chose a Committee of Twelve that had the greatest Experience and Knowledge of the Laws, to whom he added *Blegored*, a learned Doctor of the Laws; to this Committee he gave in Charge to draw up three Books of the Laws, which being laid before the King and Parliament, were approved and confirmed, and called the Laws of *Howel Dba*.

Archaion 57. The next Code of Laws was made by King *Edmund* with the Advice and Consent of the Spiritual and Temporal Nobility at his Parliament held at *London*.

Therein it is ordained that he that breaks the Peace, and assaults one in his own House, shall forfeit all he hath, and his Life to be at the King's Mercy.

Then

Then a Law is made to prevent deadly Feuds and Methods prescribed to prevent them.

In Cases of Matrimony it is ordained, that the Widow shall have half her Husband's Estate, and if there be a Child between them, the whole, till such time as the Widow marry again.

Now I proceed to the Laws of King *Edward*, which, the Preface says, were made with the Advice and Consent of his Nobles. *Archaion*
62.

He begins with the Privileges of the Church, and enacts that it shall enjoy all its Rights and Titles; that *Peter Pence* shall be duly paid, and that *Sunday* shall be kept holy, according to former Laws.

He begins his Secular Laws with ordaining, That equal Justice shall be done to all Men, as well to the Poor as the Rich, and that Fines shall be so moderated as to be suitable to the Divine Clemency, that they may be tolerable to Men, and that pecuniary Mulcts for Crimes and Offences shall not exceed the Value the Law sets upon the Criminal's Head.

He ordains that Persons qualified shall attend the County Court, and that the Bishop shall there instruct the People in the Laws of God, and the Aldermen in those of Man, which is an ancient Precedent for our Judges and Justices Charges at Assizes, and Sessions of the Peace.

H 3

Besides

Wilkins 82,
98. Besides the Secular Laws, a great many Ecclesiastical Canons were made by this King.

Archaion
88. In King *Ethelred's* time were made two Codes of Law, one at *Wodestock* and the other at *Wantage*, and both with the Advice and Consent of the Nobility.

Wilkins,
106, 113,
119. In this King's time were made two Sets of Laws, called *the first and second Books of Constitutions*, which chiefly related to Ecclesiastical Affairs. And the general *English* Council of *Ænham* was also held in his time, relating to Ecclesiastick Matters.

Spel. Con.
Tom. 1.
pag. 51C.

Wilkins
125.

In *Ethelred's* time also was made a Code of Laws, to determine how Robbery and Manlaughter committed by *English* and *Welch* upon the Borders should be punished, which consist of Nine Capitulars, and the *Latin* Title is *Senatus-consultum de Monticulis Walliæ*.

Canute's Laws were made at *Winchester*, at the *Christmas* Festival in the Year of our Lord 1036. In the Preface it is said, this is the Law or Decree which *Cnute* King of all *England*, *Denmark* and *Norway*, hath ordained with the Consent of his wife Men, *i. e.* Noblemen, as well for the Maintenance of his own Royal Dignity, as for the Benefit of his People.

ll. Canut.
54.

It appears in this King's Laws, that Treason lay against the Lord as well as against the King; for says the Law, who-
soever

soever conspire against the King or his Lord, shall lose his Life and Fortunes, except he purge himself by the triple Ordeal.

In former times all Criminals might redeem themselves by paying Money to the King, their Lords, or the Persons offended or injured; but in this King's Law, breaking into Houses in that Manner and with such Intent, as modern Law terms Burglary, open Robbery, manifest, malicious or wilful Murder, and betraying one's Lord, are declared to be mortal Crimes, such as are not to be commuted by pecuniary Mulcts or Compensations. *Ll. Cnut.*
61.

This King relieves the Subject from their former Grievance of supplying the King's Household with Provisions in his Progresses and Country Residences, by enacting and commanding all his Officers, that they make Provision for his House out of his own Land and Tillage, and compel no Man to furnish him with Provisions, and that they impose and set no Fines upon such as refuse to deliver their Goods to the King's Use: And if any Royal Officer be convicted of the Offences aforesaid, he shall forfeit his Head-money, that is so much as his Quality or Degree is valued by the Laws. This was a beneficial Law to the Subject, of which they found the Comfort, till the *Norman* Kings arbitrarily took the Peoples Goods by their Officers, called (ac- *Ll. Cnut.*
67.

ording to the *French*) *Purveyor*; and the Fuel, Corn, Victuals, and other Necessaries that they provided for the King's House was called *Purveyance*, which was one of the Grievances the Barons complained of, and was redressed by *Magna Charta*, *Westminster* the first, *Articuli super Chartas* and other modern Statutes; but now I am come to them. I return to the Laws of *Canute*, who was a martial Prince, won the Crown by his Sword and kept it by Law; for he did not keep his Militia in regular Order by military Discipline of his own arbitrary Will, but by Laws agreed to in Parliament, as appears by one of his Laws to that Purpose.

9. H. III. 19.
 3. Ed. I. 7.
 28. Ed I.
 11. Canut. 75.

If any Man in an Expedition at Land or Sea deserts his Lord or Fellow-soldier, he forfeits his Land to the Lord of whom he held it, besides his Life; and if his Estate be Bocland, be Freehold, hereditary Land, that shall be forfeited to the King: And farther it is provided in the same Law, that if any one die in Fight in the Presence of his Lord, his Heriot shall be remitted to him, and his Children shall succeed to his Lands and Goods, and those be equally divided amongst them.

From this Law are three Things observable.

First, That at the time of making this Law, the Militia of the Nation was founded

ded upon Tenure, from the Appropriation of the Forfeitures for Desertion; the Forfeiture of the great Lord, whose Lands were subject to no other Service, but the *trinodis necessitas*, viz. Expedition, building or repairing of Castles and Bridges; if he deserted the King's Colours, his Estate was forfeited to the King, the chief Lord of the Nation. If the military Vassal of a Lord, thro' Negligence did not appear at the Standard, or thro' Cowardise deserted his Lord, he forfeited his Lands to his Lord of whom he held them.

Secondly, That if a military Vassal was killed fighting under his Lord's Banners, his Heriot should be forgiven him, which was the Tenant's Furniture for War, to be yielded to the Lord at the Tenant's Death.

Thirdly, That the Lands he was possessed of at the time he was killed as aforesaid, and also his Goods should be equally divided among his Children according to the ancient Law of Partition.

Canute's Seventy Seventh Law gives leave to every Freeman to hunt in his own Grounds and Woods, but prohibits pursuing the Game in the Woods that the King reserved to himself for his own Diversion, under the Penalty of the Mulct, termed in *Saxon* the full *Wite*. *Archaion*
125.

Some time after *Canute's* Code of general Laws made at *Winchester* as beforementioned,

tioned, he made thirty four Forest Laws ; but before I enter upon them, I shall trace the original Rise and Growth of Forests in *Britain*.

To begin with the time of the *Britons*, when their Princes and great Lords, had no Occasion to set apart Places for the Preservation of Game and Beasts of Venery, (their Bruery and uncultivated Lands, being such a Nursery and Shelter for them,) it was the Interest of both Princes and Lords, rather to destroy than preserve them.

During the Wars between the *Britons* and *Saxons*, so many of the *Britons* were killed and so many fled from the conquering *Saxons*, that the cultivated Lands were more than sufficient to maintain the Conquerors and the miserable *Britons*, that staid amongst them ; for at that time there were no foreign Markets that the *Saxons* traded to, with the Product of their Lands. The *Saxon* Captains as Conquerors of the *Britons*, took possession of all the Lands of the Nation amongst themselves, their Friends and Companions in Conquest, according to Contract and Agreement.

The Woods, Wafts, and Bruery Lands, that were not appropriated to any particular Persons, remained to the chief Captain, that in process of time assumed the Title of King, who, as Occasion offered, granted Parcels of such Woods to such as he thought fit. Such

Such Success had the *Saxons* in *Britain*, that their hungry half-starv'd Friends and Relations swarmed out of the *German* Hive, to suck the Sweet of our Island, Multitudes coming over, time after time, more and more useles Woods were appropriated and improved; and as Improvements were made, the Game and Beasts of *Venery* retired from thence for Shelter into the unfrequented Woods; so that as Husbandry, and improving Lands increased, the Beasts of *Venery* grew more and more numerous in unoccupied Woods: Whither the *Saxon* Kings that took delight in Hunting, went for their Diversion, where was such Plenty of Game, that there was no Occasion for restraining Laws to preserve it. These Royal unimproved Woods are the Forests pointed at by Sir *Edward Coke*, ^{4 Inst. 319.} who says they are so ancient that no History or Record make any mention of their Erection and Beginnings.

The ancient *Saxon* Kings did not restrain ^{Temple 56.} their Nobles, Knights, or *Thanes*, from hunting in their Woods; and the neighbouring Farmers enjoyed a Liberty more valuable to them than Hunting, they had free Liberty of Pasturage, Boscage, Housebote, Plowbote, Finebote, and other Privileges, which from a long continued Usage, ^{Hollinshed 90.} became a Custom and Law; so that the People claimed a Right to those Privileges, which

The Antiquity of National

which originally sprung from Connivance, but were afterwards confirmed by *Magna Charta Forestæ*.

Whilst the ravenous Beasts of Prey were so numerous in the Royal Woods as to prevent the Increase of the Beasts of delicious Taste for the Table, the Kings gave free Liberty to the Nobility and Gentry, to hunt in their Woods; but in *Edgar's* time, the Breed of ravenous Beasts, being much lessened, that King having an elegant Taste, prohibited hunting his Deer, and appointed Officers to preserve all Game of the Table in his Woods, who were so rigorous and strict in executing their Orders, that Nobility and Gentry were prevented taking their Diversion there, and the Tenants from taking their accustomed Pasturage, Boscage, &c. The King's Officers levying Fines upon the People at their own arbitrary Will and Pleasure, there being then no Law in the Case promulged: This Procedure grew to so great a Grievance, that Noblemen, Gentlemen, and Farmers, made great Complaints for want of a Law, to ascertain the King's Prerogative and the Peoples Privilege in the Case.

King *Canute*, tho' in a great Measure a Conqueror, through his innate Goodness and Justice, brought the Proceedings to a Certainty, that all Men might know what they might and what they might not do,
by

by publishing Forest-Laws, therein setting out the Bounds of his Forests, and limiting the Power of the Forest-Officers.

Some of the latter *Saxon* Kings took so great Delight in hunting, that they appointed Officers to preserve the Game in their Woods, who in time became so rigorous and strict, as not only to prevent the Earls and Thanes to hunt there, but also refused to allow the Freemen their ancient Custom of taking Pasturage, Boscage, Housebote, Plowbote, Firebote, &c. as they had been anciently accustomed to do; the royal Officers exacted Mulcts and Fines from the Nobility, for hunting in the King's Woods, and inflicted Punishments upon the People, that therein took Pasturage, Boscage, &c. which raised such Complaints from both Nobles and People, that *Canute* published Rules and Limitations to his Officers, that had the Oversight and Care of the Royal Woods committed to them, as before mentioned.

These Rules were drawn up into form ⁴ *Inst.* 320. of Forest-Laws, and says *Manwood*, first ^{*Manwood*} penned in the *Danish* Language; but Lord ^{401.} *Coke* says, he knows not of any Laws of *Cnute*, that were drawn in the *Danish* Language, and indeed by the Translation of ^{*Spel. Gloss*} them it may be fairly conjectured, they were ^{240.} originally penned in *Saxon*, from the *Saxon* Words retained, and not by the Translator turned

The Antiquity of National

turned into *Latin*, as *Pegen*, *Pere*, *Pite*, *Getbbrech*, *Lefpegend*, &c. but in those the Translator plainly shows he was neither Master of the *Saxon* Language nor *Saxon* Letters. The Word *Pegen* that he leaves untranslated, is neither *Danish* nor *Saxon*, he mistaking þ (*i. e.*) th for a Roman p. So makes *Pegen*, which is neither *Saxon* nor *Danish*, instead of þegen a *Thane*. And in *Pere* and *Pite* he mistakes the *Saxon* ƿ (*i. e.*) W, for a Roman P. The *Saxon* Words *Were* and *Wite* are *Mulct's* well known. And *Getbbrech* he mistakes for *Gritbbrech* (*i. e.*) Breach of the Peace. And *Lefpegend* he puts instead of *Lesthegen*, again mistaking the *Saxon* þ for a Roman p. *Lefpegend* is an unknown Word, and *Lesthegen* fairly derived from the *Saxon* Læp and þegen a *Thane*.

Archaion
125.

Cnute in his Seventy seventh Political Law, allows Freemen to hunt in their own Woods and Fields, but in his Thirtieth Forest Law he gives them leave to hunt in their own Fields, and don't mention Woods. In his Twenty sixth Forest Law he allows his Bishops, Abbots and Thaners to hunt in his Woods. And so does the eleventh Chapter of *Henry III. Charta Forestæ*.

Sir *Henry Spelman* in his *Glossary*, has published *Canute's* Forest-Laws, and corrected the Mistakes, and observes that his Forest-Laws were made after his Body of Poli-

Political Laws, for in those Laws there being but one Chapter about Hunting, Reference would have been made to his Forest-Laws, if any such were then made.

Canute's Forest-Laws were made with the Advice and Consent of the Nobles of the Land. The Kings uncultivated Demeans were rarely termed Forests till this Body of Forest-Laws were made, they generally going by the Name of the King's Woods in the preceding Times; *Canute's* and *Henry III.'s* Forest-Laws were both made in favour of the Subject, and at their Petition.

As People increased, and there were Hands to cultivate more Land than was in improved Use, the Subjects petitioned the Kings, and obtained Grants of Parcels of their Demean Woods, which they improved and made fit for Arable and Pasture, which still retained the Name of the Woods, from whence they were taken, which Woods being the King's Demean, as Sovereign Lord of all Land, to which the Subject could prove a particular legal Property: And as in long tract of time, original Grants might be mislaid, lost, or worn out; (which was the Case of those few of the *Saxon* Thanes and Freemen, that stood neuter between King *William* and *Harold*;) Such of their Lands as they had from ancient Royal Grants out of the King's Woods retaining the Name of the Woods,

The Antiquity of National

Woods, out of which they were severed, gave a Colour to the greedy *Norman* Barons, to persuade the Kings that such Lands were held by Usurpation only, and thereby obtained Royal Grants of such Lands, from the first *Norman* Kings: The Defendants having nothing in *Scriptis* to produce to maintain their Title, but Prescription and immemorial Possession, were often outed of such Lands, by the Decrees and Judgments of the Courts of Law, the multitude of vexatious Suits from thence arising, at last produced the *Charta Forestæ* of King *John* and *Henry* III. wherein was enacted, that all Lands afforested by *Henry* II. or his *Norman* Predecessors Kings of *England*, that were not their own Demean Woods, should remain to such as could prove immemorial Possession and Usage.

The *Saxon* Kings and the *Danish* King *Cnute*, made no new Forests, but were content with the Woods that were their own Demeans, that were never granted to, or possessed by the Subject; but the Kings of the *Norman* Race not content with the sixty eight old Demean Woods or Forests; depopulated well-built Towns and Villages to make to themselves Places appropriated to their own Diverſion only. *William* the Conqueror laid waste thirty six Towns in *Hampshire* to make a Forest, which still retain the

the Name of the New Forest, and his Forest-Officers exercised such arbitrary Rule, as to abridge even the great Barons of the Privileges they enjoyed under the *Saxon* and *Danish* Kings; not at all regarding the Liberties given to the Subject by *Canute's* Forest-Laws.

King *William Rufus* is recorded in History for the Severity of his Proceedings against all that hunted in his Forests, he inflicted the Punishment of Death upon such as killed a Stag or Buck in his Forests, without any other Law than that of his own Will.

Henry I. was as arbitrary in this Case as his two Predecessors following their Precedents and his own boundless Will, in punishing Nobility and Gentry that hunted in his Forests.

The Nobility being prevented from their Field-Diversions in common as they had in the time of the *Saxon* Kings, such of them as were fond of Sporting, applied to the Kings for Licence to inclose Parks in their own Demains, which in those Times they could not do without Royal Licence; some few Parks the Nobility inclosed about their Castles in *William* the Conqueror's Time, but in *Henry I.*'s Time, Licences to inclose Parks were so easily obtained, that in a short time, says *Daniel*, their Multitude grew to a Disease.

I

The

The Antiquity of National

The Kings having so many Forests, had no occasion for Parks, but *Henry I.* having a Curiosity to have wild Beasts within his View, inclosed a Park about his Palace at *Wodestock*, which he stocked with Lions, Leopards, Lynxes, and other devouring Beasts, and took great Pleasure in seeing the wild Beasts chase the Deer.

Some Historians plead great Antiquity for Parks, from the Penalty of 6 Sol. set in King *Ethelbert's* Law upon *esep- nyce*, which certainly means only *Septi violatio sive fractura*, the breaking the common Hedges or Fences of a several ground, from whence arose the Writ, *clausum fregit*, which has no more Relation to an Inclosure for Beasts of Venery, than the Writ *de parco fracto*, which is for Pound Breach.

1 Inst. 199. Such of the Nobility and Gentry as brought Actions upon the Statute of *Westminster* the First for Trespasses done in their Parks, were first to prove the Legality of their Parks, either by Royal Licence, or immemorial Usage of the Place as a Park, which implied there was originally a Royal Licence. *Roger de Rannes* was amerced in King *Stephen's* Time forty Marks for inclosing a Park without Licence.

Mag. Rot.
5. Steph.
Rot. 6.
Essex.

Edric held at *Eye* in *Suffolk* twelve Plow-Lands in the Time of King *Edward*, and *Roger Mallet*, as it is recorded in *Domesday*, held it in Demean, &c. and there was

was a Market & *Parcus*, which Dr. Brady takes to be a Deer-Park, but I take it to be a Pound or Pinfold, that being more naturally related to a Market for Cattle, than a Park for Deer, which were very rare at that time.

Brady
Burghs 6.

Henry III. set a Fine upon *Thomas de Linde*, annually to be paid out of his Land, for killing a white Hart in *Blackmore* Forest, that the King had taken a liking to, which Fine was paid into the *Exchequer* by the Name of White Hart Silver.

Manwood
cap. 20.

Besides, *Canute's* Laws made in Parliament, and his Forest-Laws that seem to be his Act of Grace, there was a Law that occasionally sprung up, that is, the remarkable Law called *Engleshire* which grew in *Canute's* Time; not enforced by any of his Statutes, but direct common Law, that had not its Beginning from any positive Decree or Ordinance; but put in practice by the King's Officers of Justice with the Approbation of the great Men of the Land; which Law being occasioned by particular Circumstances, I shall give a short historical Account of its Rise, Growth, Continuance and Dissolution.

The *Danes* having lorded it in *England* a great while, under their Commanders or Kings, *Anlave*, *Justin* and *Gutbmund*, *Ethelred* King of *England* came to Agreement with them, upon certain Sums of Money

Archaion
90.

Chron.
Sax. 133.

The Antiquity of National

ney to be paid them as in the Year 991,
10000 l.

In the Year 994, 16000 l. besides Provisions.

In the Year 1002, 24000

In the Year 1007, 36000

In the Year 1012, 48000

In the Year 1018, 72000

These heavy Tributes were raised by Hidage, upon Land as was the Ship-Money for Maintenance of the Royal Fleet, which went down well enough with the *English*; but when it was applied and paid as a Pension or Tribute to the *Danes*, it was called *Dane-geld*, and became very odious to the *English*, to see their Money go to maintain the lazy drunken *Danes* in Luxury and Idleness, from whence a lazy slothful Fellow was called a Lurdan, *i. e.* a Lord Dane.

Brady 124. The King and People of *England* beheld with Grief and Vexation the Insolence of the *Danes*, but not being able to rid the Land of them by Force, supplied their Want of Force with a barbarous Policy, by Advice of *Huna* King *Ethelred's* General of his Armies, which was, that the King should order Musters and Reviews of his Armies to be made through the whole Nation on one and the same Day, and private Directions to be given to the Commander of each Army, to fall suddenly upon the *Danes* on *St. Brice's* Day, being the Day after *St. Mar-*

Martin's, which Day the *Danes* used to solemnize with Revelling, Feasting, and Drunkenness, and before their Surfeit was off, was judged a proper Time to put the secret Resolution in Execution; accordingly, the Royal Armies in all Parts of *England* at one and the same Time attacked the *Danes*, in which the Inhabitants from universal Hatred of the *Danes*, joined with the King's Armies, and massacred the *Danes* both Men and Women in one and the same Day.

Savil.
William
Malm'sb.
64.

Walsingham gives a particular Account of this Massacre, and how barbarously it was put in Execution at *London*, and that certain young Men of the *Danish* Nation being too nimble for their Pursuers, got into a small Vessel they seized in the *Thames*, and fled to *Denmark*, and acquainted King *Swain* with what was done in *England*; who to revenge the Death of his Countrymen, together with an Ambition to conquer *England*, invaded the Nation with a Fleet of three hundred Sail, says *Brompton*, in the Year 1003, and landed in *Cornwall*, and marched to *Exeter*, and proceeding with Success, drove King *Ethelred* and his Family out of *England*, and governed the Nation absolutely, giving Law to *England* without any other Rule than that of his own Will and Pleasure, which his Army Officers put in Execution instead of Civil Magistrates.

Chron.
Sax. 133.

The Antiquity of National

Henry Huntingdon says, That he himself when a Child, had heard it from certain old Men, that, by the King's Command, Letters were privately dispatched all over *England* to make away the *Danes* in one Night.

Huntingdon's Annals in Her. Savil. 429.

Henry Huntingdon says, the Massacre of the *Danes* was in the Year 1002. *Mat. of Westminster*, affirms it to be done in 1012. Other Historians also differ from one another as to the Year, some agreeing with *Huntingdon*, and others with *Mat. of Westminster*; but whether this Disagreement amongst the old Historians will bring the whole into Question, is not much to my present purpose.

Chron. Sax.

Therefore to proceed to that which is certain, *Swane* either through Revenge, Ambition, or some other Reason, in fact invaded *England* in the Year 1003 or 1004, and got such footing here, as to govern by his Army, till his Death, when the *Danish* Army chose his Son *Canute* King.

Savils Hoveden 433. 604.

The *Danish* Army of Mercenaries were so burthensome to the Nation, that the great Men of the Nation to get rid of it, swore Allegiance to *Canute*, and petitioned him to send the Army of *Danish* Mercenaries Home to *Denmark*, offering the King to be Sureties, for the Life and Safety of such old *Danish* Inhabitants as were by Agreement to stay here. And for the Safety of

of these Sureties, they offered to pay into the King's Treasury forty six Marks for every Francigena, *i. e.* Dane or Foreigner that was slain, if the Manslayer was not produced and brought to Punishment due to wilful Manslaughter; if the Criminal was not taken, the Town where a Foreigner was found slain, was to pay forty six Marks into the King's Treasury, and if the Town was not able, the Hundred was to pay the Mulct; unless *Engleshire* was found, that is, unless the Person slain was found by Inquest to be an *Englishman*, and then this Law of *Engleshire* was not concerned, the Manslayer being to receive Punishment according to the ancient Law in the Case.

There were four Circumstances that excused the Town and Hundred from the Mulct. *Mirror 47.*
7 Rep.
p. 16.

First, If the Manslayer was taken or known, for then he was to be attainted of the Manslaughter or Murder. *Calvins Case.*

Secondly, If the Criminal fled to a Monastery, and known to be in Sanctuary there, or apprehended before he took Sanctuary.

Thirdly, If the Death was found to come by Mischance.

Fourthly, If by the Coroners Inquest, the Parentage of the Person slain was found either on the Father's or Mother's Side to be *English*, then it was brought in *Engleshire*, and no Mulct to be paid. But if the Li-

neage was not found, then it was to be taken for granted he was a Foreigner.

Few Towns being able to pay so great a Fine as forty six Marks; as soon as a Foreigner was found to be slain, the Freeholders of the Hundred levyed the Mulct, and one of the Chief of them, sealed the Parcel up, and sent it to the King's Treasurer, by whom it was to be kept a Year and a Day; and if within that Time, the Manslayer was taken and delivered to the King's Justice, then the forty six Marks were to be restored to the Hundred; but if in that Time the Manslayer was not found, the Kindred of the Slain was to have six of the said Marks, and the King the other forty. And thus it is mentioned in *Hoveden*.

Ll. Ed.
Conf. 15.
16.
Hoved.
Edit.
Savil. 604.

This Law of *Engleshire* was first used in *Canute's* Time, continued in Practice in *Harold*, *Harefoot*, and *Hardicnut's* Time, and not made Statute-Law till *Edward the Confessor's* Time: And confirmed by *William the Conqueror* in his Laws, and by *Henry I.* in his Code of Law.

Ll. William Conq.
53.
Ll. Hen. 1.
92, 91.

This Law of *Engleshire* at first View carries an Appearance of Injustice and great Partiality, till the Reason and Occasion of its Rise be known. The Bishops, Earls, and great Men, that were Sureties for the Safety of the *Danes*, readily gave in to the great Mulct of forty six Marks for their own Security, justly judging that so large a
Sum

Sum to be levied upon the Hundred, would make the Inhabitants of the Hundred wherein a Man was slain, raise Hue and Cry with fresh Pursuit to apprehend the Criminal, and thereby save themselves from paying so great a Fine.

Bracton makes the Fine greater than the Laws of *the Confessor*, the *Conqueror*, or *Henry I*, it being in all of them forty six Marks, and in *Bracton* sixty six Marks, which may be a Mistake in the Printer, in not placing the X as it was in the Manuscript. Lord *Coke*, after *Bracton*, also makes the Forfeiture to be sixty six Marks in *Calvin's Case*. But the three Laws being uniform, must weigh down the Balance.

Lib. 3.
Tract. 2.
cap. 15.

7 Rep.
fol. 16.

The Author of *the Mirror of Justices*, calls this *Engleshire* a Statute-Law of King *Canute's*, but it is not in his Code of Laws, made at his Parliament of *Winchester*, with the Advice and Consent of his Nobles. The great Men having enter'd into Surety to the King for the Safety of his *Danes*, he was therewith Content; and the Nobles for their own Security, desired the King to lay the forty Marks Fine upon Towns and Hundreds as before, but never made a Law in Parliamentary Way till the *Confessor's* Time; which continued Law till *Edward* 14 Ed. III. III. when it was outted and abolished by 4th Act of Parliament.

The

The Antiquity of National

The next Legislator to King *Canute*, was *Edward the Confessor*, who with the Advice of his Parliament picked out the best and most agreeable of the Laws of King *Edgar*, and of his other Predecessors the *Saxon* Kings, which with the Collection he made out of the *West-Saxon*, *Mercian* and *Danish* Laws, made up that Body of Law, called *St. Edward's Laws*, and *Lex Angliæ*, & *Lex Terræ*, mentioned more at large in the first Chapter, fol. 25 and 26.

This King's religious and just Administration was as much, or more valued by the People, than the Text of his Laws.

The Royal Prerogative, and Parliamentary Privilege hardly ever clashed in the *Saxon* Reigns, Kings made Laws with the Advice and Consent of the Nobles, but the executive and punitive Part was in the Kings; in many of the Laws we find, *ego volo, ego jubeo*, such and such Mulcts and Fines to be inflicted upon Offenders; but those Fines were ascertained in the *Saxon* Statutes, and never exceeded by the King's Ministers.

11. *William*
Conq.
63.

William the Conqueror confirmed King *Edward's* Laws, which with the Additions made by him with the Advice of his Barons, are the Statutes or Acts of Parliament of *William I.*

But the Laws were not put in Execution with such Moderation as in the *Saxon* Times, Mulcts and Fines were not so certain,

tain, but more at Will and Pleasure of the King, his Judges and Ministers.

The *Saxon* Laws were short positive Precepts, not disputing, but commanding, and the Judges kept close to the Words of the Law, the Spirit of the Law was not reasoned away by either Judges or Advocates. Daniel fol. 44.

King *William's* Code of Laws were such as his Commissioners reported to him, viz. the *Saxon* Laws with the Emendations and Additions made by him. The *Saxon* Laws were a Compound of *British* and *Saxon*, as may be gathered from *Ingulphus's* mention of his Master King *William's* Laws, viz. *Quippe cum aliarum legibus nationum, Britonum, scilicet Anglorum, Pictorum & Scottorum præponderasset.* The *British* Laws here referred to, are probably those collected and taken into *Ethelbert's* Digest of Laws, the *liber judicialis*, the old *Dombec*, the Book of Dooms and Judgments upon Crimes. Eadmer 173.
Bede 64.
lib. 2.
cap. 5.

That the first *Saxon* Legislators took into their Digests many *British* Laws and Customs, may be fairly concluded from their retaining the Denomination of many Offices and Officers, which naturally indicate the Continuance of the Laws those Officers were to put in Execution. From the *Britons* we have the Denomination of the chief Magistrate of a City or Corporation, viz. *Meyr*, which is not derived from the *Latin* Word *Major*; but from the *British* Word *Miret*, Davies Dict.

The Antiquity of National

Miret, i. e. *custodire*. *Edlin* comes from *Ed* and *Llin* which imports *bæres vel linea Regis*, as appears in the Laws of *Howel Dba.* From the *British* Word *Edlin*, the Saxons termed the King's eldest Son *Etheling*, from thence arose that Saying concerning *Edgar*, the last Heir Male of the *Saxon* Kings, viz. *Edgar Etheling England's Darling*. Tho' King *William* received and confirmed the *Saxons* Laws as reported to him by his Commissioners in the fourth Year of his Reign, yet in the last Year of his Reign, he published another Code of Law, additional to the *Confessor's* Laws, as appears in his sixty third Law, viz. *Hoc quoque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus rebus, adauktis his quas constituimus ad utilitatem Anglorum*. *Gervase* of *Tilbury* in his Dialogue of the *Exchequer*, says, *quasdam reprobarvit, quasdam autem approbare illas transmarinas Neustriæ leges, quæ ad regni pacem tuendam efficacissimæ videbantur, adjecit*.

Archaion
172.

William II. surnamed *Rufus*, held Parliaments, but no Laws were made in his Time, but for levying *Danegelt* in an exorbitant manner, and other Taxes; He was so far from making good new Laws, that he observed not the good old Laws made by his Predecessors; and he broke in upon the old *English* Constitution much more than his Father did. *Florence* of *Worcester* gives an Account of this King's Reign, in these Words;

Words: *Omnis legum filuit justitia, causisque sub judicio positis, sola in principibus imperabat pecunia.*

Rufus raised four Shillings a Hide upon Land, by the Title of *Danegeld*, to lend to his Brother *Robert* Duke of *Normandy* upon a Mortgage of that Dukedom, to which Levy the Barons in Parliament consented for once, not excusing even the Church-Lands,

Danegeld, being a Tax upon each Hide of Land, was not called Hidage in Cities and Burroughs; the Citizens and Burghers answering in the same Proportion under the Title of *auxilium* or *donum*. Mag. Rot. 2.
Hen. II. Rot. 5, 6.

After King *Stephen* and *Henry II.*'s time, we meet not with a Tax levied by the Name of *Danegeld*, not that the Manner of raising Money by Hidage was dropped, but the Name was changed into the *Norman* Term, Tallage, in *English* Tax.

Henry I. at his Coronation promised to the Barons and People upon that Occasion assembled, to observe the old *English* Laws, the Laws of King *Edward*; and by a Charter under his Great Seal confirmed them. Ll. H. 1.2.

This King made his Code of Laws by and with the Consent of his Barons, as is expressed in the first Chapter, the whole consisting of ninety four Chapters, such Parts of his Laws as were taken from the old *English* Laws were very agreeable to the People; what was new of his own Archaion 175.
Hist. Com. Law. 136.

* Inhabitants between the Rivers Rhene, Mase, and Mosell.

own, tasted a little of the Canon Law, of the *Salic* and * *Ripuarian* Laws, and much taken out of the Customary of *Nor-mandy*, which the *English* were unacquainted with, and by no means liked, being more sharp and severe upon the People than the Laws of King *Edward*.

ll. H. 1, 7.
3, 20.

However Law Proceedings in his time received a considerable Improvement, Methods being prescribed in his Statutes for Proceedings in County Courts, Courts of the Hundred, Courts Leet and Baron; these being the Courts wherein Justice was then, and for a long time after most commonly administered, Crimes there punished, and civil Actions and Interests there determined.

ll. Wm.
Conq. 36.

By this King's Statutes the Law also received an Improvement in Descents; for whereas his Father's Law says only, *Si quis intestatus obierit, liberi ejus hæreditatem æqualiter dividunt*; this King's Law gives more particular Directions, (*viz.*) *Si quis sine liberis decesserit, Pater aut Mater ejus in hæreditatem succedant, vel frater vel soror, si Pater & Mater defint, si nec hos habeat, frater vel soror patris vel matris, & deinceps in quintum geniculum, qui cum proprios in parentela fiunt hæreditario jure succedant; & dum virilis Sexus extiterit, & hæreditas ab inde sit, fæmina non hæreditatur; Primum patris Feodum primogenitus filius habeat. Emptiones verò & deinceps acquisitiones det cui magis*

ll. H. 1, 70.

Genetivum.

gis velit. Sed si Bockland habeat quam ei Parentes dederint non mittat eam extra Cognationem suam; and so is the Law of Bockland in the Saxon Statutes of King Alfred. Ll. Alfred 37.

Henry left one Daughter *Maud* his Heir general, to whom the *Londoners* presented a Petition to restore to them the Laws of King *Edward*; in *Walsingham's* Words in his *Hypodigma Neustriae, ut liceret eis uti legibus sancti Edwardi, & non legibus patris sui Henrici, quia graves erant:* Which Petition she refusing gave Occasion to their Defection from her, neither they nor the Nobles being well inclined to a female Government.

King *Henry* restored the Election of Bishops and Abbots, which before, he and his Predecessors invested, *per Annulum & Baculum;* reserving those three Ensigns of Patronage, (*viz.*) *Conge d'Eslire,* Custody of the Temporalities and Homage upon their Restitution. He is express in his second Law that his Father confirm'd King *Edward's* Laws, and he does the same, together with the Emendations and Additions thereto made by his Father with the Advice and Consent of his Barons in Parliament. Hoveden

King *Stephen* not so scrupulous as *Maud* the Empress, promised to confirm King *Edward's* Laws, to release the Tax of *Danegelt,* to remit the Severity of the Forest Laws, and confirm to the Church *Conge d'Eslire,* and

and not retain in his Hands the Temporalities of the Bishops: With these fine Promises he got to be crowned, and took the Coronation Oath; and the Bishops and Barons swore Fealty to him conditionally, (*viz.*) so long as he observed the Tenor of his Oath, and made good his Promises: Condition is implied in the Oath of Allegiance, Homage and Fealty, between King and People, Lord and Vassal; the Oath of Allegiance being in Consideration of the King's Oath to preserve the Peoples Rights, contracted and agreed between the *Saxon* Conquerors and their Assistants, between *William I.* and his *Norman* Assistants; the Coronation Oath being virtually expressive of the *Saxon* and *Norman* original Contracts, but the Oath of the Bishops and Barons to King *Stephen* with Condition expressed, was of the first Impression: Kings of most deficient Titles have granted the most beneficial Laws and Charters. *Stephen* to gain the Interest of the Churchmen, accepted the Conditional Oath of Fealty.

Brady
Tracts
30.

Stephen according to his Promise, sealed a Charter of Confirmation of King *Edward's* Laws, and the Bishops and Barons taking Advantage from the Difficulties he was in with *Maud* the Empress and her Adherents, drew up the Charter in stronger Terms and more expressive of the *Saxon* Statutes and Administration, than was that
of

of Henry I. he forbad the Usage of the Civil Law, and no new *English* Laws were made in his time.

Stephen in his Charter owns himself to be elected King in these Words: *Ego Stephanus Dei gratia, assensu cleri & populi in Regem Angliæ electus, &c.* And the Pope in his Confirmation tells him that he was elected by a general Consent; (*viz.*) *Communi voto & unanimi assensu tam procerum quam etiam populi in Regem electus.*

Hugulstad
250, 312.

Stephen having obtained the Crown disregarded his Promises and Charter, he and his Army lived upon Plunder and Free-quarter, took Sword in Hand what he could get; and the Barons his Adherents exercised Sovereign Authority in the Districts about their Castles, coined Money, raised Taxes, and imposed their Wills upon the People for Law. In *William of Newburgh's* Words, *Erant in Anglia quodammodo, tot reges vel potius tyranni, quot domini castellorum, &c.* Battles and Sieges of Castles, supplied the Place of Parliament-Statutes in this Reign.

Brady 284.

In the Parliament of *Winchester* an Agreement was made (to put a farther Stop to domestick War) that King *Stephen* should hold the Crown during Life, and *Henry* the Dukedom of *Normandy*, and be proclaimed Heir apparent to the Kingdom of *England*

Daniel
fol. 73.

K

as

The Antiquity of National

as the adopted Son of King *Stephen*, and that 1117 Castles built by the Permission of King *Stephen* should be demolished. After this Agreement the King made a Progress into most Parts of the Kingdom to reform the Mischiefs that had grown up under the Sword. At his Return he called a Parliament at *London*, to advise the best Manner of bringing the State into good Order, and was ready to hear, and free to put in Execution the Resolves of his Parliament, and soon after he grew good, and died.

Henry II. succeeded upon King *Stephen's* Death, and he wisely weighing his Circumstances, and how far the Power of the Bishops and Ecclesiasticks went in setting the Crown upon King *Stephen's* Head, in Neglect of his just Claim and Right, they having since the time of *Henry I.* enlarged their Power and Jurisdiction beyond their Vocation, and that his Successors might not be overborn by the Power of the Ecclesiasticks, as he had been in King *Stephen's* time, had it at heart to lessen their Authority; and in order thereto advised and consulted with his Lay-Nobility, who were jealous enough of the growing Greatness of the Ecclesiasticks, urging that their claiming an Exemption from Secular Punishments, lessened the Authority of the King's Courts, and that the Bishops were notoriously partial

tial to the Churchmen; that since the King's Coronation there had been above a hundred Manslaughters committed by Priests and Ecclesiasticks, and the Offenders not punished by the Bishops, as in the first Chapter pag. 35.

For Remedy whereof the King calls a Parliament at *Westminster*; and propounds to have it enacted, that all such of the Clergy as should be taken and convicted of any heinous Offence, should lose the Privilege of the Church, and be delivered to the civil Magistrate, to be punished for their Offences as other the King's Subjects were; which the Archbishop *Becket* and the rest of the Bishops so strenuously opposed that nothing was done; at which the King was so displeas'd that he dissolved the Parliament, in the Year 1163. *Daniel.*
fol. 84.

The next Year *viz.* 1164 the King calls a Parliament at *Clarendon*, where the Laws of *Henry I.* were confirm'd, and the famous Statutes of *Clarendon* made, which the Archbishop and Bishops swore to observe, tho' very unwillingly, being advis'd so to do by the Pope and Cardinals.

It was high time for the Monarchy to curb the exorbitant Encroachments of the Pope and Ecclesiasticks; for the Archbishop by the Pope's Encouragement, order'd his *Suffragan* Bishops to take into their Jails

all Clerks that were guilty of Crimes, whether they were Murder, Manlaughter, Theft or Breach of the Peace, and there keep and protect them from the King's Justices.

Hoveden
Edit. Savil.
494 to
549.

The Statutes of *Clarendon* being drawn up so strongly in Affirmance of the King's Sovereignty in all Cafes without Reserve to the Ecclesiastick assumed Jurisdiction, that upon Complaint of the Archbishop and Bishops to the Pope, he damned most of the Statutes of *Clarendon* and absolved the Archbishop and Bishops from their Oaths taken to observe them. This so fired the King that he called a Parliament at *Northampton* where the Statutes of *Clarendon* were reinforced and enlarged, and there in Parliament the Archbishop was called to account for Royal Revenues by him received, which he thought not fit to answer, but fled into *France*; upon which the King, ordained that if any were found carrying Letters or Mandates from the Pope or Archbishop, containing any Interdiction of Christianity in *England*, he should be taken and without Delay executed as a Traitor both to King and Kingdom; and that any Bishop, Ecclesiastick, or Layman, that should receive and retain such Letters, should forfeit all their Goods and Chattels to the King and be presently banished the Realm

Daniel fo.
88.

Realm with all their Kindred and Adherents, and that no Bishops or other Ecclesiasticks should pass over Sea without Licence from the King first obtained; that none should appeal to the Pope: That all Clerks that had any Revenues in *England* should return into the Realm within three Months upon pain of forfeiting their Estates to the King; and that *Peter-Pence* should be gathered and kept till the King's Pleasure was known.

Henry II. confirmed the Laws of King *Edward*, and at his Coronation swore to maintain them, and he confirmed the Laws of *Henry I.* *Leges Henrici avi sui præcepit* (says *Hoveden*) *per totum Regnum inviolabiliter observari.* He check'd the Pride and Insolence of the Pope and Clergy by the aforesaid Statutes made in his Parliament of *Clarendon*, which were renewed and enlarged at *Northampton*.

These Statutes took away the Exemption the Ecclesiasticks claimed from Secular Jurisdiction, and ordered there should be no Appeal to the Bishop without the King's Licence. That no Archbishop or Bishop should go over Seas at the Pope's Command without the King's Licence: That the Bishop should not excommunicate the King's Tenants in *Capite* without the King's Licence: That the Bishop should not have

Hoveden
Edit. Savil.
491.

Mat. Paris
Ann. 1164.

Hoveden
549.

Hist Com.
1.3w 138,

145.

Brady 326.

Append.
41.

Wilkins
321, 324.

The Antiquity of National

the Conuzance of Perjury or *fidei læſionis*. That the Clergy ſhould be convened before Lay Judges, and that the King's Courts ſhould have Conuzance of Churches and of Tithes.

The Writ *Ne exeat Regnum* is grounded upon theſe Statutes of *Clarendon*, of which I mention but this ſhort Abstract, the Reader may ſee them at large in Dr. *Brady's* History, and Dr. *Wilkins's* Saxon Laws. Something of this Nature was done in the Caſe of Archbiſhop *Anſelm*, by Ediſt of *Rufus*, but not having Conſent of the Parliament, the Writ could not be founded upon that. This King by the Advice of his Parliament at *Northampton* inſtituted Juſtices itinerant in the tenth Year of his Reign *Anno Dom. 1164.* and divided the Kingdom into ſix Circuits. The Parliament at *Northampton* was held there the twenty fifth of *January 1164,* and the Parliament at *Nottingham* at *Eaſter 1176,* when he divided the Nation into four Parts, and to every Part appointed wiſe Men to do Juſtice in the Land. This King's Juſtices, and thoſe of his Succeſſors, continued to make regular Iters at the State Times till *Edward III.* conſtituted Juſtices of Affize and Jail Delivery in their ſtead.

This King's *Capitula Itineris* grounded upon the Statutes of *Clarendon* and *Northampton,* gave an Improvement to *Henry I.* his

Epimomis

15.

Hift. Com.

Law 141.

Brady,

333, 334.

Daniel fo.

104.

Hoveden

548.

1. Ed. III.

16.

2. Ed. III.

2.

4. Ed. III.

2.

14. Ed. III.

16.

18. Ed. III.

20. Ed. III.

1, 2, 3.

Ll. H. 1. 70.

his Law of Inheritances; for in the fourth Statute of *Northampton* it is enacted, that upon the Death of a Free-tenant, the Heir shall remain in such Possession as the Father had of his Fee in his Life-time, and pay the Father's Debts and Legacies, and the Relict have her Dower; and if the Lord of the Fee refuse giving Seisin and Possession, the Justices according to Verdict of twelve Men shall award Possession. Brady 327.

By the eleventh Statute of *Clarendon*, the Bishops are prohibited to give Judgment of Loss of Life or Member, as appears by the Words of the Statute, and that they were Tenants in *Capite per Baroniam*. *Archiepiscopi & Episcopi & universæ personæ regni qui de rege tenent in Capite, habent possessiones suas de Domino rege sicut Baroniam, & inde respondent justitiis & ministris regis, & sequuntur & faciunt omnès reëtitudines & consuetudines Regis, & sicut Barones ceteri debent interesse judiciis curiæ regis cum Baronibus, usque perveniat in judicio ad diminutionem membrorum vel ad mortem.* Brady
Append.
43.
Dan. 2d
Part 10. 22.

This Statute is in Affirmance of the Canon Law which prohibits Clergymen to be present in Judgment of Blood: But the Bishop of *Durham* notwithstanding the Canon and this Statute, continued to sit in Court in purple Robes and to give Judgment M.S. Parl.
Journal
226.

ment of Death; whence comes that old Saying, *Solum Dunelmense judicat Stola & Ense*: He being a *Palatine*.

*Hoveden
Edit Savil.
549.*

This King instead of Trial by Battle or single Combat, instituted the Trial by grand Affize, by twelve Knights or Freemen: The Writ to the Sheriff, called *magna assisa eligenda*, was to return four Knights before the Justices, which four Knights were upon their Oaths, to return twelve Knights of the Vicinage to try the *Mise* in a Writ of Right: *Mise* is a Term of Law appropriated to a Writ of Right, so called, because both Parties have put themselves upon the meer Right to be tried by the grand Affize; that, which in other Actions is called an Issue, in a Writ of Right is called a *Mise*.

Tho' the barbarous Usage of Trial by Combat or single Duel was not wholly abrogated by the Statutes of *Clarendon* and *Northampton*, yet the Trial by twelve Jurats appointed by those Statutes being so much more just and rational, soon grew into general Use: And the King gave Discouragement to combate by his own Writs, of which take one Instance from *Glanvil*; (*viz.*) *Rex Vicecom. salutem, prohibe. N. ne teneat placitum in curia sua, quod est inter M. & R. de una hida terræ, &c. nisi duellum inde vadiatum fuerit, quia M. est teneans,*

*Glanvil
lib. 2. cap.
8, 9.*

nens, p̄sũit se in assisam meam & petit recognitionem fieri.

A Combat was demanded in the common Bench in the thirteenth of Queen Elizabeth, and allowed by the Justices, a Day assigned, Ground railed, and a Stage for the Judges built, Combatants ready, when by the Queen's Order, the Lord Chief Justice stood up, and forbad the Proceedings, and determined possession of the Lands to the Defendant, under Conditions mentioned in *Speed*, where you may see the whole.

Richard I. made many Constitutions without Parliament, as before mentioned; he distributed Justice as his Father had begun by itinerant Justices to whom he gave Articles of Inquiry, termed *Capitula coronæ & capitula de Judæis*; he in some Measure reformed, augmented and improved the *Capitula Itineris* of his Father, wherein the Justices itinerant were limited to hold Plea in Writs of Right, or the grand Assize to half a Knight's Fee or under, but this King Richard in his *Capitula* enlarged the Power of the itinerant Justices, so that the People might in greater Values have Right done in their Counties without going to the King's Courts for Right.

*Hoveden.
Edit. Savil.
744.*

There are no Memorials of Statute Laws or Acts of Parliament in this King's time, other

other than for Aids and Subsidies; tho' without all doubt Acts of Parliament were made in his time, yet the Records of them appear not, nor do the ancient Historians transmit any Copies of them. But the different Proceedings in the Courts of Law from *William I.* to *Richard I.* were very probably occasioned by new Statute Laws, made in the times of the first *Norman Kings*.

3. *Ed. 1, 4.* King *Richard's* naval Laws called the Roll of *Oleron* from the Place at which they were made, were a Collection of the *Saxon* maritime Laws, by him augmented and enlarged; and tho' not made with Advice of Parliament, were so good and agreeable, as to be confirmed by the Statute of *Westminster* the first.

This King in his eighth Year, establish'd a Rule for Weights and Measures, that they should be the same throughout *England*, which was a reinforcing King *Edgar's* Law of Weights and Measures according to the Standard of *Winchester*, which was confirmed by King *William I.* and all these Ordinances were confirmed by *Magna Charta*.

King *John*. I having in Folio 36 given a short Account of this King and his Parliaments, and the great Contests between him and his Barons, in this Chapter confine my self to Acts of Parliament and Proceedings upon them, At

At his Coronation he swore to preserve the Rights of the Holy Church, to abolish all bad and unjust Laws, and to pass and confirm such good ones as his Barons in Parliament should offer to him.

Wilkins
353, 356.

Hubert Walter Archbishop of *Canterbury* preached the Coronation Sermon, who being zealously attached to *K. John*, in his Sermon in opposition to the Right of *Arthur* Duke of *Britain*, advanced that no one had Right to the Crown, *nisi ab universitate Regni unanimiter electus*, which Doctrine *King John* approved in the Charters granted in the first Year of his Reign, wherein he expresses himself to owe his Crown to the Election and Favour of the People, in these Words, *Jure hereditario & mediante tam cleri quam populi consensu & favore*.

Old Register of
Canterb.

State Tracts
387.

The Charters of Liberties and the Forest were with Difficulty obtained of this King by the Barons as in Folio 38. The King being under great Difficulties with his Barons, granted the great Charters which the Barons drew up as they pleased; they pickt out the best of *King Edward's* and *Henry I.'s* Laws, and this Charter was much more beneficial to the People than that of *Henry I.*

King John's Charters did not contain all the Statute Laws of his Predecessors, but only

only

only or principally such as were of a more comprehensive Nature, concerning the common Rights and Liberties of the Church, Baronage, and Commonalty; which were of the greatest Moment, and had been most invaded by his Brother.

There are many *British* and *Saxon* Usages, Customs and Proceedings in Courts of Judicature still in Practice, that are not in the Digests of *Ethelbert*, *Ina*, *Alfred*, *Edward*, *Athelstan*, *Edmund*, *Edgar*, *Ethelred*, *Canute*, or *Edward the Confessor*, which coming into Use before the time of Memory, obtained the Force of Law; immemorial Usage continued, says *Bracton*, is Law, (*viz.*) *Lex non scripta*.

The Charter of the Forest was to reform the Excesses and Encroachments which were made, especially in the time of *Richard I.* and *Henry II.* who had made new Afforestations, and much extended the Rigour of the Forest Laws.

Burnet's
Hist. of his
own
Times 32.

King *John's* original Charter being committed *in deposito* to the Archbishop of *Canterbury*, was found by Bishop *Warner's* Executors amongst his Papers; he being sent by Archbishop *Laud* when he was impeached, with the Key of his Cabinet, to secure his Papers; amongst the rest he took this Charter.

What

What other Acts of Parliament were made in *Richard I.* and in this King's time, the Rust of Time hath bereaved us of, or are absorpt in his *Magna Charta*, neither Record or History giving any account of them.

Sir *Edward Coke* in the Second Part of his Institutes, shews how the *English Law* stood before *Magna Charta*, and the Statutes of *Henry III.* whether they were introductory of any new Law, or only Declaratory of the old; what were the Causes and Ends of their being enacted, and what Branches of them have been since alter'd or repeal'd, all which that great Sage of the Law has done with such great Learning and Judgment, that I shan't presume to add any Observations of my own, but refer the Reader to that learned Judge's Comments upon the old Statutes.

Pope *Gregory* demanded of *Edward I.* the *M.* mark Tribute, granted by King *John*, to which the King answered, That without his Prelates and Barons Advice and Consent, he could not make any Answer; and that at his Coronation, he had bound himself by Oath to preserve the Rights of the Crown, and that without the Advice and Consent of the Barons in Parliament he would do nothing in the Case.

Edward

Cot. Re-
cords 102.

Edward III. understanding that the Pope intended to cite him to *Rome* to do him Homage, as King *John* did to one of his Predecessors for the Realms of *England* and *Ireland*, and also to demand Payment of the Tribute granted by King *John*, wisely advised with his Parliament; and it was enacted that neither King *John*, nor any King of *England* could bring the Realm into Thraldom and Subjection to the Pope or any other Potentate; and the Act declares what King *John* did, was contrary to his Coronation Oath; and the Parliament voted an Address to the King, therein expressing their Resolution to stand by the King against all Encroachments the Pope should make upon his Crown and Dignity. The Record of the Resolution of the Parliament in this Case is at large in the fourth Institute; but the Act of Parliament made on that Occasion is not printed: An Account of this Matter in Parliament is in *Cotton's* Records, to which I refer the Reader. I mention the two preceding Paragraphs here, as having relation to King *John's* Reign.

Cot. Re-
cords 102.

4. Inst. 13.

Henry III. in the ninth Year of his Reign, passed the two great Charters in Parliament, which little differed from the great Charters of his Father King *John*, granted at *Running-Mead*, and afterwards,

as before, in Folios 43, to 48, the great Charters were cancelled and confirmed several times.

Besides *Magna Charta*, many beneficial Acts of Parliament were made in this Reign: The Statute of *Merton* in the twentieth Year of his Reign; the Statute *de anno Biffextili*, in the twenty first Year; the Statute intituled, *Affisa panis & cerevisiæ*, in the fifty first Year; the Statute of Days in Bank in the same Year, and also the Statute of Dower, two Statutes of the Exchequer, and the Statute of Pillory and Tumbrel: And in his fifty second Year, the Statutes of *Marlbridge*, wherein the great Charters were confirmed; and about the same time the *Edictum de Kenelworth*, being an Award, Agreement, or Composition between the King his Noblemen and Commons; besides the Statute of *Ireland* (as termed) tho' it seemeth to be no more than an Edict of the King's or a Warrant of Directions to *Gerard* Son of *Maurice* Justicier of *Ireland*, made in the fourteenth Year of his Reign.

The Parliaments from *William I.* to the time of King *John*, let no Opportunity slip to obtain from the Kings the Confirmation of the *Saxon* Laws, and their Promise to make them the Rule of their Government. The Kings made no Scruple to swear at their Coronations to observe the Laws, but then they interpreted them as they pleased; and

Brass. 34.

The Antiquity of National

and after the *Magna Charta* of King *John* and *Henry III.* were obtained, there were frequent Contests between *Henry* and his Barons about the Interpretation of the Charters: *Brañton* gives it for Law that the King is the Interpreter of Royal Charters, his Words are, *Si dictio aliqua duos contineat intellectus, Domini Regis erit expectanda interpretatio, & voluntas, cum ejus sit interpretari cujus est condere.* It can't be presumed that *Brañton* meant such Royal Charters as the Barons were Parties to, as they were to *Magna Charta*; for to take him in that large Sense, is to make it Law according to *Brañton*, that the King can interpret away the Spirit of an Act of Parliament or Royal Charters confirmed in Parliament, which I look upon to be very far from that learned Sage's Meaning, and rather think that the Royal Charters that *Brañton* says are to be interpreted by the King, are his Royal Grants of Honours, Manners, Lands, or other things of the King's own, in which no Person has a Claim or Property, but the Persons to whom the King's Bounty is extended. King *James II.* his Judges follow'd *Brañton's* Words too literally and extensively, when they gave their Opinions that the King could dispense with all penal Laws, thereby putting *Magna Charta* and all Statute Laws into the Power of the King, whereas

whereas Lords and Commons are Parties to Acts of Parliament, which are not to be altered or repealed, but by the Authority that made them; and thus may *Braſton's* Words be fairly interpreted.

The Statutes of *Clarendon* as before mentioned, were made by that great Prince *Henry II.* with the Advice and Consent of his Parliament, to put a ſtop to the Uſurpations and Encroachments of the Pope and his Inſtruments, here the Biſhops and Clergy, and at a time when the Papacy was very powerful in *England*, the great Pope *Alexander III.* in the Chair at *Rome*, and his devoted Creature *Thomas Becket*, that towering preſumptuous Biſhop in the Chair of *Canterbury*: But however great and powerful the Church was at that time, notwithstanding the Pope damn'd the Statutes of *Clarendon*, and diſpenſed with the Oaths the Archbiſhop and Biſhops had taken to obſerve the Laws made at *Clarendon*, yet the Pope's Thunderbolts were not ſufficient to ſet aſide the Laws made by the King and his Parliament, which were always in *England* a Bulwark too ſtrong to be ſtormed.

The Popes gave a Precedent for a diſpenſing Power in *Henry II.* King *John*, and *Henry III's* time, which with *Papal non obſtante's* to Oaths, Laws, and Statutes in the Bulls, cauſed a Spirit in *Henry III's*
L Parliament

Mat. Paris.

Parliament of 1246, where it was resolved that Satisfaction should be demanded of the Pope: Accordingly the King himself writ to the Pope; the Bishops and Abbots writ by themselves, and the Temporal Barons by themselves, all uniform in their Articles of Complaints, against the Pope's Bulls with *non obstante*. These Letters so exasperated the haughty Pope, that he order'd the Bishops to levy a Tax of one Third of Moveables, upon all Clergymen, that did reside upon their Benefices, and one Moiety upon such as did not reside.

But the King sent Prohibitions to the Bishops Proceedings in the Pope's Orders, and to shew his farther Resentment to the Pope, sent Writs to his Sheriffs, to hinder the Ecclesiastical Courts from making Enquiry, unless in matrimonial and testamentary Causes; and these Writs were grounded upon the Statutes of *Clarendon*, that were confirmed at *Northampton* in *Henry IId's* time.

Tho' *Henry III.* would not allow the Popes *non obstante*; yet to serve his own Occasions he followed that Precedent and made out Writs with that detestable Addition of *non obstante*; but History fully shews the Difficulties that King was in, by not complying with his Parliaments. The Popes gave the first Precedents of a dispensing Power,

Power, which Princes that had Views to arbitrary Government, readily copied after: The Ufurpation is highly detestable in both, but that of the Popes much the more enormous Crime, for they dispensed with Divine Laws, whereas Royal Dispensations reached to human Laws only.

Edward I. may be justly stiled the *English Justinian*, both Statute Law and Common Law obtained a great Perfection in his Time; to his Reign is justly ascribed the Honour of establishing methodical Proceedings in administering Justice between Man and Man, for Pleadings, Resolutions and Decisions grew regular and rational; good Laws he offer'd to his Parliaments, for their Confirmation and Consent, and when they passed into Laws, he made choice of learned and upright Judges to put them in Execution: Silently without Noise, and by gentle Steps and Degrees, he abrogated many bad and inconvenient Customs and Usages both in the superior Courts, and in the Courts of the great Men, and substituted such regular Methods, as by length of Time and Experience had of their Aptness and Convenience, have stood and been used ever since, without any great Alteration, and are now as it were incorporated into, and become a Part of the Common Law of *England*, says Chief Justice *Hales*.

Hist. Com.
Law 1634

The Antiquity of National

The old *Saxon* and *Norman* Statutes of his Predecessors, were short positive Institutions to correct, and by Mulcts to punish the Vices and Crimes that were prevailing at the time of their making; and many of the Methods of putting them in Execution, local, differing in one Place to what they were in another, but in this King's Time, the Sunshine of Reason and Uniformity broke forth into great Lustre. In this King's Time, the Law was so much amended and altered, that the old Coat was but just perceivable under the several new pieces set upon it, by his learned Improvers of the Law. The Statute Laws, though short in Comparison with later Acts of Parliament, yet were very clear, and fully expressive of the Sense of the Legislators.

3 *Ed.* 1. 34. The first Statute of *Scandalum Magnatum*
 2 *Rich.* 2. 5. was made in this King's Time. *Westminster*
 12 *Rich.* 2. the first, cap. 34. which was enlarged by the
 11. 2 *Rich.* 2. 5. and by 12 *Rich.* 2. 11. These
Ll. Alfred. Statutes are in Affirmance of the Common
Ll. Edgar Law of *England*, viz. the *Saxon* Statutes,
 4. made for the Punishment of such as raise
Ll. Canute false Stories, and scandalous Rumours to
 24. 54. raise Discord between the King and Nobles;
 with this Difference, the old Laws order'd
 the Tongues of such Revilers to be cut out,
 the modern Statutes inflict Fine and Imprisonment,
 and leave the Measure thereof to
 Judge and Jury.

The

The *Magna Charta* of King *John*, and that of *Henry III.* receiving their lasting Confirmation in Parliament in the twenty fifth Year of *Edward I.* and by *Articuli super chartas* in the twenty eighth of his Reign, I shall in a short Sketch draw out the Original from whence *Magna Charta* was taken, and how and after what manner succeeding Acts of Parliament were made.

The old Laws of *Britain* generally called the *Druides* Laws from their being committed to the Care of the *Druides* to see them put in Execution; such of them as Tradition and Usage had made known to *Ethelbert* the first *Saxon* Legislator, and were approved by him and his Wita's, were taken into his Code of Law, as appears from several *British* Terms, and the Testimonies of *Malmesbury*, *William Thorn*, and the Register of *Canterbury*, as expressed by *Speed*, Speed 349. who says, *Ethelbert* having a care of them that should come after, brought the Laws of *Kent* into their own Mother Tongue; S. Taylor 53. 49. from whence may be concluded, *Ethelbert* was well acquainted with the Laws and Customs of *Kent* before he made his Code of Laws, which were received by the rest of the Kings of the Heptarchy; though they had Laws also made in their own Kingdoms with the Advice of their Wita's.

L 3

Alfred

Archaism
22.

Alfred the Great, becoming Monarch and Legislator of the whole Nation, made Inspection into the Laws of *Ina*, *Offa* and *Ethelbert*, and with the Advice of his Wita's, rejected such as were grown obsolete and useless, and retained in his Code of Law, such as were esteemed useful and proper to the Time. *Edgar* gave a considerable Enlargement to the Laws of his Predecessors.

S. Taylor
54.

The Laws of *England* went under a triple Denomination, viz. *West-Saxon*, *Mercian*, and *Danish* Law, which were not so many different Laws, Customs or Usages, being chiefly different from one another in the several Amercements, Mulcts and Fines, for the Transgression of one and the same Law, as before mentioned.

Edward the Confessor with the Advice of his Parliament revised the Laws of his Predecessors, and from thence made the Code of Law, called King *Edward's* Law, and sometimes the good old Laws of *England*, which with the just and regular putting them in Execution, was the Law that the Barons so incessantly petitioned the *Norman* Kings to confirm and make their Rule of Administration, which they always promised to do at their Coronations, and how they performed their Oaths and Promises, appears in this Essay under their several Reigns.

Wil-

William the Conqueror received and confirmed the *Confessor's* Laws, which with the Additions thereunto made relating to military Tenures, and the Preservation of the publick Peace of the Kingdom, is the Body of Law called the Laws of King *William*, the same which King *Edward* his Kinsman observed before him, as are the Words of the Preface. Archaion
159.

William II. at his Coronation swore to observe the Laws of his Predecessors, which is enough to be said of this King, relating to Acts of Parliament.

Henry I. at his Coronation swore to maintain the Laws of King *Edward*, and of *William* I. and brought in a Volume of new Laws, very different from the old Laws of *England*, which for the most part are quite antiquated and grown obsolete, being made up of certain Parts of the Canon and Civil Law, and other Provisions and Customs that the King and Barons in Parliament thought on, chose and put together, as useful at that Time. Archaion
175.

The next considerable Body of Acts of Parliament were those made by *Henry* II. in his Parliaments of *Clarendon* and *Northampton*, from the Places where they were enacted, called the Statutes of *Clarendon* and *Northampton*.

The Antiquity of National

These are the Acts of Parliament made before Time of Memory, whereof there are no authentick Records, but only Transcripts in ancient Historians, Books and Manuscripts, which being not upon Record, obtain no farther than by Usage and Custom, they are ingrafted into the Body of the Common Law, and make a Part of the *Lex non scripta*, as being made before the Beginning of the Reign of *Richard I.* which by *Westminster* the First is determined to be Time before Memory.

Many Parts of the Common Law visibly spring from such of the Laws of the *Saxon* Kings as are preserved by *Paris*, *Hoveden*, *Brompton*, and other ancient Historians, and Registers of Cathedrals and Abbies; and if more of the *Saxon* Statutes had been preserved (many of them being undoubtedly lost) probably the Footsteps of the original Institution of many more Laws that now obtain meerly as Common Law, or Customary Law by immemorial Usage, would appear to have been at first Statute Law or Acts of Parliament, which in the *Saxon* Times were all very short, being only Capitularies of Laws, the Proceedings and Determinations upon those short Heads being much more than the Text, and retain'd by Usage only.

Now

Now I proceed to the Statutes made within Time of Memory. The *Leges scriptæ* being originally reduced into Writing before they were enacted.

In the seventeenth Year of King *John*, A. D. 1215, he being under great Difficulties promised to grant the Barons a Charter of Liberties which they drew up in as strong Terms as they pleased, collecting into two Charters the most comprehensive Laws of the *Saxon* Kings and of his *Norman* Predecessors, that were most strongly in Affirmance of the Laws and Liberties of the Church, the Baronage and Commonalty, and blunting the Edge of the Forest-Laws. And this great Charter the King confirmed in Parliament.

King *John's* great Charters were confirmed by *Henry III.* in his Minority, and cancelled at his Will, and confirmed as the Kings Necessities obliged him, and in the fifty second Year of his Reign confirmed by the Statute of *Marlbrige*; and again confirmed in the twenty fifth and twenty eighth of *Edward I.* as before mentioned. 52 H. 3. 5.

Edward explained, and excellently enforced *Magna Charta* by the Statute *de Tallagio non concedendo*, and by other good Statutes improved the Statute-Laws to a great Perfection, of which a short Account follows.

In

The Antiquity of National

In *Edward I.*'s Time so many good and beneficial Acts of Parliament were made as to give a particular Account of them would exceed my intended Brevity; therefore I shall mention only some of the most remarkable, and leave the Reader to the Statutes at large for the rest.

He established and distributed the several Jurisdictions of Courts within their proper Bounds.

He check'd the Incroachments and Insolence of the Clergy by the Statute of *Carlisle*. 35 *Edward I.*

He declared the Limits and Bounds of the Ecclesiastical Jurisdiction by the Statute of *Circumspecte agatis & Articuli cleri*; which latter Statute says Judge *Hales*, was made in the Beginning of *Edward I.*'s Time, though it was not published till *Edward II.*'s Time.

He established the Limits of the Court of Common Pleas, by the Statute of *Articuli super chartas*, cap. 4.

He established the Extent of the Jurisdiction of the Court of *Steward* and *Marschal*, by the Statute of *Articuli super chartas*, cap. 3. in the eighteenth Year of his Reign.

He settled the Bounds of inferior Courts of the Counties, Hundreds and Courts Baron, and by *Westminster I.* cap. 35. he kept the Courts of great Men within their proper Limits under several Penalties, where before

before very great Incroachments and Oppressions were exercised.

He provided against the Interruption of the common Justice of the Kingdom, by Mandates under the Great Seal or Privy Seal, by the Statute of *Articuli super chartas*, cap. 6.

He settled the Forms and Solemnities of Fines, confining them to the Common Pleas and to Justices Itinerant, and appointed the Place where they brought the Records after their Circuits, whereby one common Repository might be kept of Assurance of Lands, which he did by the Statute *De modo levandi fines*, 18. Ed. I.

He settled that orderly Method for the Safety and Preservation of the Peace of the Kingdom, and suppressing of Robberies by the Statute of *Winchester*.

He settled the Method of Tenures, to prevent Multiplicity of Penalties, which grew to a great Inconvenience, which he remedied by the Statute of *Quia emptores terrarum*, 18 Ed. I.

He settled a speedier Way for Recovery of Debts, not only for Merchants and Tradesmen, by the Statutes of *Acton Burnel* & *De mercatoribus*, but also for other Persons, by granting an Execution for a Moiety of the Lands by *Elegit*. By *West. 2. cap. 18.*

He

The Antiquity of National

He made effectual Provision for Recovery of Advowsons and Presentations to Churches, which was before infinitely lame and defective, by Statute of *Westminster* 2. cap. 5.

He made that great Alteration in Estates from what they were formerly, by *Westminster* 2. cap. 1. whereby Estates of Fee-simple, conditional at Common Law, were turned into Estates Tail, not removeable from the Issue by the ordinary Methods of Alienation: And upon this Statute and the Qualifications hereof, are the Superstructures built of 7 *Hen.* VII. cap. 3. 32 *Hen.* VIII. cap. 1. and 34 *Hen.* VIII. cap. 5.

He introduced quite a new Method, both in the Laws of *Wales*, and in their Method of Dispensation by the Statute of *Rutland*.

By the Laws of *Wales* Bastards inherited, which he alter'd by the Statute of *Wales*, 12 *Ed.* I. wherein 'tis enacted that Bastards shall not inherit.

He rectified and set in order the Method of collecting his Revenue in the *Exchequer*, and removed obsolete and illeivable Parts thereof out of Charge; and by the Statutes of *Westminster* 1. and *Westminster* 2. *Gloucester* and *Westminster* 3. and that of *Articuli super chartas*, he did remove almost all that was either grievous or impracticable out of the Law, and the Course of its Administration,

tion, and introduced such regular Proceedings into the Courts, as in a great measure remain in practice to the present Time.

These Statutes so wisely adapted to the Improvement of the Common Law amongst others are learnedly commented by Lord *Coke*, and concisely mentioned by the Author of the History of the Common Law of *England*; from which two great Men I have taken this short Account of King *Edward's* Statutes.

A great many of the Acts of Parliament of *Edward I.* though not found in the Records, and only preserved in ancient Manuscripts and printed Books, yet have all along been accepted, and taken as Acts of Parliament, though the Rolls are lost; ancient and modern Books of Pleadings, common received Opinion and Reputation, and the Approbation of the learned Judges have given them a Sanction, and supplied the want of the original Record: For though the Record of a general Statute made within Time of Memory be lost or not extant, such Statute shall not lose its Force, if any authentick Memorial thereof be in Books, and seconded by a generally received Tradition and Usage, attesting and proving the same.

Hist. Com.
Law 19,
15, 10.

The Statutes or Acts of Parliament in *Edward I.'s* Time were drawn up into the
Form

Form of a Law, which being agreed and approved by Lords and Commons, became Law as soon as the King gave his Approbation and Consent, which was the finishing Confirmation and Sanction. The Lords consult and advise, the Commons consent, and the King ordains; and in such manner were Acts of Parliament built up in *Edward I.* and *Edward II.*'s Time.

In the Beginning of *Edward III.*'s Reign another Method obtained, and lasted to near the End of *Henry VI.*'s Reign, they were not in that space of Time drawn up in the first Instance into the Forms of Acts of Parliament; the first Spring was from a Petition. And when it was for Redress of Grievances, it was presented by the Commons to the King in the Lords House; both Petition and Answer were enter'd in the Parliament Rolls, and out of both, by Advice of the Judges, and others of the King's Council, the Act was drawn up conformable to the Petition and the King's Answer, and generally expressed to be granted by the King with the Consent of the Lords at the Request of the Commons. Sometimes the King rejected Part, and ratified Part of the Petition, as it came from the King, so was it drawn up into the Form of a Law, and that was the Act of Parliament, of which manner are a multitude of Instances in Sir

Robert

Inspection
of
Long Parl.
13, 47.

Hist. Com.
Law 14.

4 Inst. 25.

Robert Cotton's Abridgement of the Records of the Tower.

The Petition and Answer thus reduced into the Form of a Statute was enter'd into the Statute Roll, and the Tenor thereof affixed to Proclamation Writs, directed and sent to the several Sheriffs to proclaim it as a Law in their respective Counties. 4 Inst. 26.

Some Difficulties arising and Inconveniences found, by this Manner of extracting out of the Petition and Answer; about the latter End of *Henry VI.* and the Beginning of *Edward IV.*'s Reign, the Parliaments returned to the Method in Use in *Edward I.*'s Time, to reduce Petition and Answer in the first Instance into the full and compleat Form of an Act of Parliament, which was enter'd commonly in this Form: *Item quedam petitio exhibitã fuit in hoc Parlamento formam actus in se continens, &c.* and abating that Stile, the Method still continues much the same as to the drawing up at first Instance the Act in perfect Form, and so to come to the King for Royal Assent.

The Court of *Chancery* was not a Court of *Equity* till *Henry VI.*'s Time, it being then so made by Acts of Parliament. 15 H. VI. 4.
31 H. VI. 2.
4 Inst. 82.
33 H. VI. 7.

By Act of Parliament in *Henry VI.*'s Time, the Number of common Attornies was limited to the Number of Six in *Norfolk*, Six in *Suffolk*, and Two in the City of *Norwich*.

In

Daniel
fol. 227.
14 *Ed. III.*
1.

In the Year 1330 the Fourteenth of *Edward III.* the King called a Parliament at *London*, which gave him great Aids towards his *French Wars*, and the King confirmed *Magna Charta*.

Cotton's
Records
31, 32, 34.

In the fifteenth of *Edward III.* the Commons petition that the great Charter of Liberties, and the Charter of the Forests be duly observed, and that whoever of the King's Officers infringed the same should lose his Place : And that the Chancellor and high Officers of the Kingdom should be chosen in Parliament, and sworn to observe the great Charters and the Laws of the Land. To which the King accorded, and set his Seal to the Act, which being afterwards repealed, is not in *Pulton's* printed Statutes.

2 *Ed. III.*

2.
4 *Ed. III.*
14.

Charters of Pardon for Felony, are not to be granted out of Parliament, but where the King may do it by his Oath.

Daniel
fol. 255.

This King in most of his Parliaments confirmed the great Charters which was generally at the first Meeting of the Parliament, as may particularly be seen in the printed Acts. This short Sketch of *Magna Charta* is intended to show that the Law of the Land was the same before this Charter, and that this only declared what was Law before, and enforced by a Statute of King, Lords, and Commons.

Richard

Richard II. in the third Year of his Reign Daniel 2d Part fol. 3.
A. D. 1379. removed Sir *Richard Scroop* from being Lord Chancellor of *England*, to which high Post he was appointed with Consent of Parliament the Year before.

In the fifth of *Richard II.* was made the 3 Inst. 40. first Statute relating to Heresy, and being without the Consent of the Commons was not upon the Statute-Roll, but by *John Braibroke* Bishop of *London*, Lord Chancellor, was caused to be put into the Parliamentary Writ of Proclamation of Statutes.

In the second of *Henry IV.* was made the 2H.IV.152 first Statute-Law for burning of Hereticks, which passed Lords and Commons, and had the Royal Assent.

In the thirty first of *Henry VIII.* passed 31H.VIII. 14. the Act for burning such as Hereticks that did not conform to the Six Articles in that Statute mentioned; which was so severe a Law as to be called the Bloody Act.

An Act of Parliament was made in the 26H.VIII. 14. twenty sixth of *Henry VIII.* to empower the Bishop of the Diocess to name a Suffragan Burnes's Refor. Vol. I. P. 157. or two in his Diocess, as in the Diocess of *Norwich*, one at *Thetford*, and another at *Ipswich*. The Bishop was to name two Persons to the King for him to make his choice of one to be a Suffragan Bishop.

C H A P. III.

The constituent Members of great Councils or Parliaments, and first of the Lords.

THE old *Britons* held general or national Councils before *Cæsar's* Invasion as mentioned in his Commentaries ; who were the constituent Members of the *British* Councils, is the Subject of this Chapter.

Kilian
voce Edel.

Somner
voce Ethel.

S. Taylor
49.

The Members of the ancient *British* Councils were the Princes, their Sons, the *Edlins* of Princely or Noble Race, the *Druides* their Priests, and Lawyers, and the Governors of the People ; all met in Council armed, but the *Druides*, who from the Sacredness of their Function were exempted from Service in the Wars : Young Men they did not admit into Council till they were esteemed of Ability of Mind, and Body to be fit for Council and War, and then the President in Council delivered to such young Man a Spear or Partisan, from which Time he was a Member of the Commonwealth, and fit to be appointed or chosen in Council, Governor of the People of a Village or District, or a Leader in their Armies.

During

During the *Roman* Government in *Britain*, 'tis in vain to enquire after *British* Members of Council, they having no general Councils, till upon the *Romans* deserting the Island, the *Britons* re-assumed their ancient Manner of holding general Councils, the Members whereof were the same, as before the *Roman* Invasion, excepting the *Druides*, who were driven out of the Nation before the *Romans* left it.

After the *Saxons* had made a compleat Conquest of the *Britons*, they went into Measures for settling Peace, and Property in general Councils, which they called *Witenagemote*, a Meeting of *Wita's*, wise Men, *i. e.* Nobles.

The *Saxon Wita's* of which the *Witenagemote* consisted, were the original Sharers of the Lands of the *Britons*, the *Saxons* were a Parcel of Collegues, Joint-Undertakers, who by Precontract were to divide amongst them the *Britons* Estates; the chief Leader afterwards assumed the Name of King, and his Collegues were termed *Thegnes* or *Thanes*, and in Latin *Capitanei*, from their having a Capital Right in the *Britons* Lands: These Collegues and their Descendants were the *Saxon* Nobles, that were the Members of the great Councils, the Suiters of the Court of the Grand Seignory of the Kingdom; all Nobility at that Time arif-

ing from Possessions. The *Saxon Capitanei* in their Portions of Land, held Courts and judged their Vassals, and after the Manner of the *Britons*, were petty Princes in their own Territories, and obliged the Kings to swear to administer equal Right to all, and to be obedient to all Laws made and agreed in general Council.

Æthelbert the first Christian *Saxon* King made his Code of Laws in *Witenagemote*, by and with the Advice of his *Wita's*, he being the first *Saxon* Christian King as well as Legislator, and had his Bishops and chief Ecclesiasticks in his *Witenagemotes*; The Bishops were Members of great Synods or Councils in his Reign with the Lay-Nobility, as amongst the *Britons* in *Wales*, as in Folio 17.

The Laws of the two Kings of *Kent*, *Hlothar* and *Eadric* were agreed by the *Wita's*, and confirmed by the two Kings who did not reign together; but *Eadric* succeeded *Hlothar*, and with the Consent of his *Wita's* confirmed the Laws made by his Predecessor.

Wilkins 10. *Wightred* the next *Saxon* Legislator, summoned his *Wita's* to the *Witenagemote* at *Berghamsted*, where his Laws were made with the Advice and Consent of the *Wita's*, which is a general Term for all Nobility, for the Laws were signed by the King,
Wer-

Chron.
Sax. 48.

Werbung his Queen, the Bishops, Abbots, Abbesses, and the rest of the *Wita's* assembled at *Berghamsted*.

Ina King of the *West-Saxons* in *Witena-gemote*, made his Code of Laws by the Advice and Consent of *Cenred* his Father, *Hedda* and *Erkenwald* his Bishops, his Aldermen and the rest of his *Wita's*. Archaion
1.

Offa is mentioned by *Alfred* in the close of his Ecclesiastical Laws to be a Legislator; he says there, that he had inspected the Laws of *Ina*, *Offa*, and *Ethelbert*. *Offa's* Laws not being published amongst the *Saxon* Laws, I can't tell who were the constituent Members of his *Witenagemote*, and whether his Laws were there made, but in all probability he followed the Custom of the Time in the Form and Manner of making his Laws: He held a Council or Synod at *Calcuith*, where was made the first Law or Canon for Payment of Tithes. Archaion
22.

Tyrrell
Cl.

Kenwolf King of *Mercia* held a *Witena-gemote* in the Year 811, says Mr. *Tyrrell*, from the Annals of *Winchelcomb*, wherein the constituent Members of that Assembly are termed, *Merciorum optimates*, *Episcopos*, *Principes*, *Comites*, *Procuratores*, *meosque propinquos*. What these *Procuratores* were, I shall account for when I come to the *Norman* Reigns. Tyrrell
XCV.

Spel. Con.
Tom. 1.
pag. 340.

Tyrrel
247, 255.

Bede. 27,
33. and
passim.

Egbert held a *Witenagemote* at *Kingston* consisting of *Wita's Anno Dom. 836*. He held a *Witenagemote Anno Dom. 829* at *Winchester*, where by Consent of his *Wita's Clerus & Populus*, he changed the Name of the Nation and called it *England*, and the People *Englishmen* instead of *Jutes, Angles, and Saxons*, tho' it appears by the Title of *Bede's History*, and in several Chapters, that the Nation was called *England* before *Egbert's* time. The Title of *Bede* being, *Ecclesiasticæ historiæ gentis Anglorum libri quinque*, and he writ near a hundred Years before King *Egbert* began his Reign: In the twenty third Chapter I find, *prædicare verbum Dei genti Anglorum*.

Prid.
Tithe 175.

Spel. Con.
350.

MS. Parl.
cap. 1.

Tyrrel.
261.

Ethelwolf in the Year 855, held a *Witenagemote* at *Winchester*, wherein the tenth of the Kingdom was given to the Church, by and with the Consent of the Bishops, Abbots, Abbeſſes, Dukes, Earls and Noblemen of the whole Land, *aliorumque fidelium infinita multitudine*, (says *Ingulphus* and *Matthew of Westminster*) *qui omnes regium chirographum laudaverunt, dignitates verò nomina subscripserunt*. The *infinita multitudo* had no Share in making the Laws, but only consented and applauded the Acts of the Kings and Nobles, it appearing in no History of this time, that the People had any Negative to Laws made by King and Nobles. It appears

appears by *Edgar's* Charter to the Abby of *Ely* that such Numbers were wont to meet at *Witenagemotes* as no Room could hold; therefore *Edgar's* at *Wulfamere* where this Charter was made, met in the open Field, but it no where appears that the People were Parties to the Charter, but only approved and applauded what was signed by the King and the Nobles.

Alfred the great and good Legislator inspected the Laws of his Predecessors, and with the Advice of his *Wita's* rejected such as were obsolete, and confirmed and enforced such as were esteemed useful, which with the Addition made by him and his *Witenagemote*, was the Code of Law of his time that was approved by all the People. But Noblemen only were the Parties concerned in making of his Laws. Archaion
22.

The League or Laws agreed between *Alfred* and *Guthron* the *Danish* King, were made with the Advice and Consent of the *Wita's* of both Kings, as it is expressly mentioned in the Preface to that League. Archaion
36.

The League between *Alfred* and *Guthron* was confirmed and enlarged by *Edward* and *Guthron*, by and with the Advice of their *Wita's*. Archaion
41.

Edward the Elder's Code of Law begins in an imperial Stile, as an *Edictum principis, ego Edwardus Rex præcipio, &c.* Archaion
38.

but by what follows, it appears that his Laws were made with the Advice of his *Wita's* in his *Witenagemote* at *Exeter*, as is expressed in his fourth Law: In the *Latin* Translation thus, *Edwardus Rex Exoniæ commoratus, ac Sapientium suorum usus consilio, &c.*

Æthelstan's Laws were made by the Advice of *Wulfbelm* Archbishop, and his other *Archaiou* Bishops, and *Godes Theowa*, i. e. Gods Ministers, the Priests. And at the Conclusion of the first Part of his Laws, they are said to be made at *Grancbester* by the Advice of his Archbishop, his *Etbeling's* and *Wita's*; which in modern Terms are Lords Spiritual and Temporal.

45, 46, 53.

His Code of Laws made at *Exeter* in *Christmas*, is expressed to be with the Advice of his *Wita's*, which general Word there includes the whole Nobility both Spiritual and Temporal.

The *Godes Theowa* are not to be taken for Priests in general, In the *Saxon* it is, *Miner ſpencebirceoper ealpa mina oþra Birceopa 7 Godeþ ðeopa* the Word *Mina* extends alſo to *Godes Theowa*, which is in modern *English*, my Bishops and my Priests, that is my Priests of my Patronage, or my Chaplains, viz. *Dignitaries* of the Church, as in *Æthelstan's Judicia Civitatis Lundoniæ*, where a Value is ſet upon every Perſon's Head, the Word *Secular Thane*, and God's *Thane*

Wilkins
71.

Thane are of equal Value, that is the King's *Thane* and the King's Priest, for every *Thane* and every Priest were not Members of the *Witenagemote*, only the King's *Thane* and the King's Priest, that is the *Dignitaries* of the Church, who were the Kings Ecclesiastical *Thanes*, of equal Dignity with the King's Lay *Thane*; as appears in the *Judicia Civitatis Lundoniæ* aforesaid, were made by the Advice of the Bishops and *Gerefan* i. e. Aldermen or Earls, which Constitutions *tam comites quam coloni* swore to observe; and note, that tho' the Earls and Churls are mentioned together in that Part relating to the Swearing to the Observance of them, yet in the enacting Clause the Churls are not at all mentioned; the Words being, *Hoc est consilium quod Episcopi & præfetti edixerunt*, as before in the first Chapter,

Savil's
Edit, of
Ingulph.
858.

King *Withlaf* of *Mercia* his Charter to the Abby of *Croyland*, which was signed by the King, *Egbert* King of the *West-Saxons*, *Etholwolpb* his Son, *Ceolnoth* Archbishop of *Canterbury*, many other Bishops, Abbots, and Dukes, and then signed *Swithinus Presbyter Regis Egberti*, and *Bosa* King *Withlaf's* Secretary, and no other of less Degree, the King's Chaplain being a *Dignitary* of the Church, signed along with the Kings, the Bishops and Lay Nobility.

Edmund's Laws were made at *London* in *Archaion* *Easter*, in a Council of his Ecclesiasticks 57.
and

and Laicks, and that is all is said in his Laws of the Members of the Council that consented to the making of them, only the two Archbishops *Odo* and *Wulston* are named, and many other Bishops in general, and his Laicks are in the original *Witena* that is his *Thanes*, his Nobles.

Eldred held a *Witenagemote* of Bishops and Lay Nobles only, says *Ingulphus*, before mentioned in Folio 23.

Archaion
62, 65.

Edgar's Laws were made in a *Witenagemote* of his *Wita's*, without any Epithet, but according to the Custom of those times, may be determined to be Lords Spiritual and Temporal, both being included in the single Word *Witena*. In his eighth Statute it's ordained that there shall be but one Standard of Money, and that Weights and Measures shall be according to the Standard of *Winchester*, which being so shortly mentioned implies that the Standard of *Winchester* was then well known, and probably mentioned in King *Alfred's Domesday*, called in *English* the Roll of *Winchester*, from its being kept in *Alfred's Treasury* there; and this ancient Standard is confirmed by *Magna Charta*, and later Statutes.

Ll. Cnut.

9.

Ll. William

Cong. 57.

9. *H. III.*

25.

14. *Ed. III.*

12.

Mirrouer

cap. 1.

Seft. 3.

Amongst the Ordinances of the ancient Kings mentioned in the *Mirror*, one relates to Money, wherein it is said that no King of this Realm shall change the Coin,

or

or impair or enhance or diminish it, without Assent of parliament, that is without the Consent of the Nobles, which through all the preceding Reigns appear to be the only Members of Parliament.

Ethelred his Code of Laws was made at *Wodestock* in *Mercia* with the Advice of his *Wita's*; and the League between him and *Anlave* was made with the Consent of his and *Anlave's Wita's*. *Archaion*
88, 90, 94.

The *Senatus-Consultum de monticulis Walliæ* was made with the Advice and Consent of the *English Wita's* and the *Roldboran* i. e. Counsellors of *Wales*. *Wilkins,*
125.

The *Liber Constitutionum* was composed with the Advice of his *Wita's*: The Second Part of his *Liber Constitutionum* was made at *Wantage* in *Berkshire* with the like Advice; in the Word Advice is implied Authority in the Case.

This King also held a general Council at *Ænham* in *Hampshire*, where Laws were made by him and his Nobles. *viz. Hæ sunt constitutiones quas Angli consilarii elegerunt & edixerunt*, and these Laws were made by the King and his Nobles only to be sure, for none but them were ever called the King's Counsellors, as the Barons of latter times have been stiled *consilarii nati*. *Spel. Con.*
Tom. 1.
pag. 513.

Canute

Archaion
97, 107,
122.

Canute at his *Witenagemote* held at *Winchester* in *Christmas*, made his Laws with the Advice of his *Wita's*, and like a good Christian King, first began with enforcing the Laws of God and Holy Church.

His political Laws were also made with the Advice of his *Wita's*, who tho' they were Parties to the making of them, the enforcing Part is an imperial Stile, *viz. per omnem Angliam observari præcipio*, and in his sixty seventh Law *præfectis meis omnibus mando*, &c, that is, the making the Law was in the King and Nobles, but the Administration and putting them in Execution, in the King and his Ministers.

Coke. 9.
Rep. to
Reader.

In the fifth Year of his Reign he held a *Witenagemote* of Archbishops, Bishops, Dukes, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*, &c. This Multitude of People was a common Attendant of the Royal Courts *de more*, which being held at the great Festivals, Holiday times, when the People were at leisure, and relaxed from their Labour, flocked to the King's Court, where at those Seasons they were sure to see the King and his Nobles in State and Grandeur, where was feasting, of which they got plentiful Remnants, and with the Feasting there were Acts of Legislature, and the Peoples Hearts being made glad, they generally

nerally applauded all that was done by the King and his Nobles ; and that was all the Share the Commons had or claimed in those Days, for *populi multitudo* was no constituent Part of the great Councils or Parliaments.

Inspe-
tions of
Long Par.
24.

The Saxons had two sorts of *Thanes*, *viz.* the King's *Thane* and the lesser *Thane*; by the Laws of *Canute*, the King's *Thane* was charged with four Horses, and the inferior *Thane* with but two for Heriot. The Heriot commuted into Money was four Pound for a King's *Thane*, and two Pound for the lesser *Thane*; as in a Fragment of *Canute's* Laws, *si minoris Vironis i. e. Baronis, 2 Libræ; si majoris quatuor; majores Barones & minores Barones*, shall be described in King *John's* Reign.

Ll. Canut.
69.

Camb.
Brit. 108.

Edward the Confessor was the Legislator so highly adored in the *Norman* Reigns; the constituent Members of his Parliaments were Lords Spiritual and Temporal, for tho' in his Law *de Apibus*, 'tis said a Tenth was granted by former Kings to the Church, *à Rege, Baronibus & Populo*, yet it no where appears either in ancient Registers or old Historians, that the Commons in his or his Predecessors times, were Parties to making of Acts of Legislature, which his Law *de Regis officio* plainly makes out in the following Words, *viz. debet enim Rex omnia ritè*

Ll. Ed.
Conf. 8,
17, 21.

The Antiquity of National

ritè facere in Regno, & per judicium procerum Regni: Et debet judicium rectum in Regno facere & justitiam per consilium procerum regni sui tenere.

What the *Proceres* were that are mentioned in the seventeenth Law, is well explained in his twenty first Law, *de Baronibus qui suas habent curias & consuetudines*, in the following Words, *viz. Archiepiscopi, Episcopi, Comites, Barones, & omnes qui habuerint Sacham, Socam, Thol, Theam & Infangthefe, etiam milites suos, & proprios servientes, scilicet dapiferos, pincernas, camerarios, pistoros, & cocos sub suo friborgo habeant; & item isti suos armigeros vel alios sibi servientes sub suo friborgo.* These Barons, these *Proceres*, were the Lords of great Honours and Manners, that had great Estates and great Power, who had Knights and the greatest Commoners their Vassals and Suiters of their Courts.

From this King upward to *Ina*, and *Wightred*, we find no constituent Members of Lay or Ecclesiastical Synods but the Spiritual and Temporal *Wita's*, as in the Preamble to *Ina's* Laws they are said to be made with the Advice and Consent, *Episcoporum meorum, omnium Senatorum meorum & natu majorum Sapientum populi mei:* These last were Governours of the People, that had the People under their Jurisdiction,

Archæon.

1.

on, and answer'd for them in great Councils, as in the Council or Synod of *Bergbamsted* held by King *Wightred*; in his First Law, are these Words, *congregatum fuit optimorum, Procerum consilium, &c. Et loquebantur omnes ecclesiastici ordinis dignitates unanimiter cum populo sibi subiecto*, they answered for the People within their Jurisdictions.

Sir *Edward Coke* and other learned Writers, conclude that in *Edward the Confessor's* ^{4 Inst. 2. 12.} Parliaments, there were Commons regularly chosen for Counties, Cities, and Boroughs, from the Authority of an ancient Manuscript bearing this long Title. *viz. Modus quomodo Parliamentum Regis Angliæ & Anglorum suorum, tenebatur temporibus Regis Edwardi, filii Regis Ethelredi, qui modus recitatus fuit per discretiores Regni coram Willielmo duce Normanniæ Conquestore & Rege Angliæ, ipso Conquestore hoc præcipiente, & per ipsum approbatus, & suis temporibus & temporibus Successorum suorum Regum Angliæ usitatus.*

This pretended Piece of Antiquity, says ^{Tit. Mon. 739. 743.} Mr. *Selden*, is the Imposture of some bold Fancy, which he proves by Terms therein, that did not come into Use till long after the *Confessor's* time, as *Iustitiæ de banco*, ^{MS. Ll. Keeper Williams.} *capitalis Iustitiarius qui tenet placita coram rege*, the Barons of the Exchequer, Steward, Marshal, &c. and farther the Quantity of an Earldom and Barony, therein limited to

to twenty Knights Fees the former, and the latter to thirteen Knights Fees, and one third of a Knight's Fee, which is a Rule that was never observed in constituting Earls and Barons; for in the first *Norman* Reigns many held above twenty, thirty, or fifty Knights Fees that were not accounted Earls. This *modus tenendi parliamentum* is published by *W. Hakewell*, with his Additions out of the Journals of the House of Commons; but the Antiquity of the Manuscript is not allowed by the judicious Criticks, its placing the Peers in the House of Parliament, not agreeing with ancient or modern Custom. So Knights, Citizens and Burgeffes summoned to Parliament, must be looked for in succeeding Reigns.

Before I proceed to the *Norman* Reigns I shall give an Account of the constituent Members of the *Saxon* Courts *de more*.

The *Saxon* Kings at the three great Festivals of the Year were attended by their great Counsellors, where the State of the Nation was considered of; and when any new Laws were found necessary they were made by the King with the Advice and Consent of the Nobles, who meeting at the King's Court of Residence at the great Festivals in Course without Summons, that Court obtained the Name of the Court *de more* or *ex more*, and none but the Nobility
 sat

fat either in Judgment or Consultation about new Laws with the King.

Tho' great Part of the Nobility attended the King's Court at the great Festivals, yet upon extraordinary Emergencies the whole Nobility was summoned by particular Writs to each, and the Cause of such Summons expressed in the Writs.

William the Conqueror ascertained the Places of holding his Court *de more* that the Nobility might always know where to attend the King.

In the ancient *Saxon* Reigns the calling Cor. Poss. the great Men of the Nation to Consulta-⁴⁴ tion, was *edicto Principis*, at the King's Pleasure; *Alfred* having at Heart the Reformation of Laws and Manners, had an Assembly of his Ecclesiastick and Lay Nobles at the three great Festivals; and so it continued from his time, to the unsafe times of King *Stephen* and King *John*, when it returned again to the uncertain Summons of the King.

During the Wars between King *Stephen* and *Maud* the Empress, the Courts *de more* had Interruption, but were restored again by *Henry II.* and *Richard I.*

The Order and Degrees of the Members of the *Saxon Witenagemote* and Court *ex more* from King *Alfred's* time to *William I.* stood thus:

N

First,

- Archaion* 55. First, the Archbishop and *Etheling* are of the same Value or Estimation in *Æthelstan's* Laws of *Wergild*, the Saxon Word *Etheling* includes *Satrapa, Dux & Comes*, of Royal Race, and also the other great Dukes and Earls of Provinces or Counties.
- Ll. Cnut.* 55. The next Degree of Nobility there, is the Bishop and Alderman or Judge of the County Court, who was of a lower Degree than the *Comes*, as appears in *Æthelstan's* and *Cnute's* Laws.
- Wilkins* 71. The third Degree was the *Holds* and *Highbereves*: The *Holds* were military Commanders, and answer to Field Marshal and Knight Marshal: The *Highbereve* was the Person to whom the King committed the Custody or Charge of a County where there was no Alderman, called in *Latin, Vicecomes, Vicedominus*, and in *French Vidome*.
- Tit. Hon.* 604, 632. The fourth and last Degree of Nobility was the *Mafs-Thegne* or *Thane*, and the *World-Thegne* or *Thane*, that is to say the King's Priest and the King's *Thane*, for every Priest or every *Thane* had not the Privilege of being Members of the *Witenagemote* or Court *de more*, only such as were the King's Ministers. The King's *World-Thane* that had some Office under the King, was a Member of the *Witenagemote* or Court *de more*. The *Mafs Thane* was a Priest that was the King's Chaplain, or a Dignitary
- Tit. Hon.* 611. The fourth and last Degree of Nobility was the *Mafs-Thegne* or *Thane*, and the *World-Thegne* or *Thane*, that is to say the King's Priest and the King's *Thane*, for every Priest or every *Thane* had not the Privilege of being Members of the *Witenagemote* or Court *de more*, only such as were the King's Ministers. The King's *World-Thane* that had some Office under the King, was a Member of the *Witenagemote* or Court *de more*. The *Mafs Thane* was a Priest that was the King's Chaplain, or a Dignitary
- Bede. lib. 2. cap. 9. lib. 4. cap. 12.*

Dignitary of the Church, that had a superintendency over other Priests.

Now I proceed to the Members of the *Norman* Parliaments after the coming of *William* I. premising that the *Saxon* Nobility arose from great possession of Lands taken from the *Britons* or ministerial Offices under Kings, as Governors of Provinces, Counties, Tithings, Hundreds, Castles or Burghs, together with the Prelates and other Governors of the inferior Clergy: So the *Norman* Possessors of great Portions of Lands taken from the *English Saxons*, and high ministerial Offices under the Kings, were the *Norman* Nobility, the Earls and Barons that were Members of the *Norman* Parliaments, together with the aforesaid Ecclesiasticks.

Tit. Hon:
621, 635,
666.

King *William's* Commissioners sent into the several Counties of *England* to inquire what were the Laws and Customs of *England* in the time of King *Edward*, made their Report in *consilio Baronum*. His Laws were also made in *consilio Baronum*; and his Charter, wherein he separates the Ecclesiastical from the Temporal Jurisdiction, was made with the Advice and Consent of his Archbishops, Bishops, Abbots, Priors and Barons of the Realm.

MS. Parl.
cap. 4.

The Temporal Members of Parliament in King *William's* Reign were the old

N 2

Saxon

The Antiquity of National

Saxon Thanes, that sided with King *William* and some few that stood neuter and were allowed to keep their Tainlands, and were stiled sometimes *Thanes* and sometimes Barons, but the former Title was soon after King *William's* Reign quite dropt.

The *Normans* that came over with Duke *William*, claimed according to Precontract, Shares of the *Saxon* Lands and Estates according to the Proportion of the several Undertakers, Retinue and Expence. *Roger de Montgomery*, *William Fitz Osborn*, *William de Warren*, *Roger Bigod*, and others that furnished out many Ships, and brought over many of their Vassals, at their own Expence, scrambled and got great Shares of the *Saxons* Lands, their great Possessions being confirmed by the King: The Possessor was called the King's Man, Freeholder or Baron, or the King's Tenant *in Capite*.

King *William's* Companions in Conquest had great Shares of *English* Lands committed to them to hold of the King in military Service, and were at the King's Call, to be ready to serve him in his Wars, and in the two first *Norman* Reigns were under absolute Command: In *Henry I.'s* time they began to obtain some Privileges, and in succeeding Reigns they contended with the Crown, and with Force defended their Properties, and at last obtained the
great

great Charter of Liberties; from that time they grew so great and powerful that they extorted several Confirmations of the great Charters, and from the middle of King *John's* time grew too powerful for the Crown, till the politick Prince *Henry VII.* in gratifying their Luxury alter'd the Balance of Power: He gave Leave to the great Men to make Feofments of Knight Service Lands to the Use of their Wills without Licence; then they wasted apace their ancient Tenures and the Commons not then grown luxurious were ready to buy as soon as the Lords were ready to sell; of which I shall give a more particular Account when I come to the Reigns of *Henry VII.* and *Henry VIII.* in the Chapter of Privilege of Parliament.

7 H. VII.
3.
3 H. VIII.
4.
32 H. VIII.
1.
34 H. VIII.
5.

The King's Barons had Places of Honour at Court and in the Country, and were the great Barons, who took Titles from the Counties, Castles, Burghs, &c. that were committed to their Charge.

Such as held lesser Portions than these great Barons immediately of the King in military Service, were lesser Barons, but being Tenants *in Capite* had Right to come to the Parliament or Court *de more*, if they held forty Hides of Land *in Capite*, for under that Quantity of Land none were Members of the Court *de more* or Parlia-

ment in King *William's* time, of which Sir *William Dugdale* gives an Instance, in the Preface to his *Baronage*, from a Record in the Register of *Ely*, viz.

Abbas Wulfricus habuit fratrem, Gutmundum vocabulo; cui filiam præpotentis viri in matrimonium conjungi paraverat; sed quoniam ille xl hidarum terræ dominium minus obtineret, licet nobilis esset, inter proceres tunc nuncupari non potuit.

The Baronies or Tenancies in *Capite*, were great Tenures in *William I.'s* time, and had no Creation at all, either by Charter or Robe, but were Barons by their Tenure only; these were the great Barons and in King *Stephen's* time the great Baronies were split into lesser Tenancies, from whence arose the Distinction of *Barones Majores*, and *Barones Minores*; these latter were in after times termed Peers, when the Kings summoned them to Parliament to sit with the great Barons.

Selden's
Privilege
of Barons
p. 7, 9, 10.

Proxies in Parliament is a Privilege appropriated to the Lords only; and the first Instance of a Proxy in Parliament that occurs in the *Memoirs of Parliament*, is in that of *Carlisle* under *Edward I.*

And in a Parliament of *Westminster* under *Edward II.* the Bishops of *Durham* and *Carlisle*, were allowed to send their Proxies to Parliament.

In

In those ancient times the Lords were not obliged to make Barons only their Proxies in the House of Lords as the Custom now is, but the Bishops and parliamentary Abbots usually gave their Letters of Proxy to Prebendaries, Parsons, Canonists, and such like, as appear in the Journals of the House of Lords; but since the first Year of *Henry VIII.* there appear in the Journals no Proxies but such as were Barons of Parliament.

These great Barons and Tenants *in Capite* were Members of the great Council of the Nation, owing Suit and Service to the King in his great Soke or Seignory of the Nation, as the Vavasors and Subinfeudatories of the King's Barons did to them in their Sokes or lesser Seignories, as the lesser Freeholders did Suit and Service to the Vavasor or Knight in his Hall-mote.

The great Barons that were made Earls of Counties, had the third Part of the Profits of County Courts, from Amercements, Fines, and Forfeitures. *Rex habebat C. Solidos & Comes comitatus L.* as in *Edward the Confessor's* Law. The third Penny that the Earl had Livery of, was his Creation Money, and he was not full Earl of his County, till the Sheriff had a Mandate to make Livery to him of the *Tertium denarium de placitis comitatus, ut inde fit Comes.* Some

Tit. Hon.
618, 635.

Ll. Ed.
Conf. 31:

Dial. Scac.
31.

Dugd.
Baron
Pref. 3, 4.

N 4

Earls

Earls were made by Charter, as *Geoffry de Mandevil* was made Earl of *Essex* by the Charter of *Maud* the Empress, and some by Investiture, *per cincturam cingulo comitatus*, but the first great Barons were Barons by Tenure only, without an Investiture or Charter.

Eadmer
67.

In *Rufus* and *Henry I.*'s time none were Members of Parliament but the Tenants *in Capite* which being great Tenancies did not make the Parliament consist of a tumultuous Number; till King *Stephen*, during his Wars with *Maud* the Empress and the Barons, as Baronies escheated, divided those Baronies into smaller Tenancies, and granted them to his Friends and Followers, who holding those Fragments of Baronies in chief of the King, produced the Distinction of Fees of the old, and Fees of the new Feofment.

Cam. Brit.
169.

Cambden
Apologia
11.

King *John* followed *Stephen*'s Method of splitting Baronies, as they came into the King's Hands by Attainders or Escheats; which increased the Barons to such a Number as to be termed by *Cambden*, *seditiosa & turbulenta multitudo*, as was the Parliament of *Oxford* in the 47th of *Henry III.*

There being before King *John*'s time the Distinctions of *Barones Majores & Barones Minores*, *Barones Regni & Barones Regis*, and Barons of the old and Barons of the new

new Feofment. The great Barons when they forced King *John* to grant his Charter at *Running-Mead*, obtained a farther Privilege to themselves, in these Words, *de scutagiis assidendis, submoneri faciemus Archiepiscopos, Episcopos, Abbates, & Majores Barones regni sigillatim per literas nostras, & præterea faciemus submoneri in generali per Vicecomites & Ballivos nostros, omnes alios qui in capite tenent de nobis, &c.*

Brady
Append.
131.

Mag.
Chart.
Joan cap.
17.

Mag.
Chart.
H.3. ca.31.

Afterwards the great Barons obtained a farther Privilege that none should come to Parliament but such as had special Writs directed to them: So there were two sorts of Barons, viz. Barons by Investiture Writ and Tenure, and Barons by Writ only, which last were only Barons Peers summoned at the King's Pleasure: And from that time no more great Barons were made but by Investiture in Parliament, till *Richard II.*'s time.

Tit. Hon.
711 to 717.

Brady's
Tracts 76.

The Barons by Writ only, that had not a whole Barony in Tenure, but part of split Barony or none, paid Tenths with the great Barons in proportion to their Tenure, were the Barons Peers, so often found in Summons to Parliament, by the Titles of *Autres Nobles, Grandees, Seigneurs, Banerets, and Chivalers*: These were summoned *ab libitum Regis*, and sometimes expressed in the Writ, *hac vice tantum*, but

Parl.
Elfing.
46.

Brady's
Tracts

the King could not omit summoning the great Barons; as said in Page 182. The original great *Norman* Barons were so by Tenure only, but their Heirs were invested into the Honours of their Predecessors with the Ceremony of the Sword and Robe of their Dignity, which was not a new Creation, but only Admission of the Heir into the Honour of his immediate Ancestor. An Instance or two out of many, may suffice to shew the Ancient Usage; *Rex cinxit Thomam de Warwic cingulo Comitatus Warwic; & mandatum est Vicecomiti Warwic quod eidem Comiti habere faciat, id quod habere debet, nomine Comitis Warwici; & de quo prædecessores sui Comites Warwici seifiti fuerunt, tanquam ad eos pertinente, nomine Comitatus Warwici:* This was Livery of the Earldom to *Thomas*, five of his Predecessors being Earls of *Warwick* before him; *Henry de Newburgh* being made Earl of *Warwick* by *William* the Conqueror, *Roger de Montgomery* Earl of *Arundel* and *Shrewsbury*, and *William Warren* Earl of *Surry*, also made by *William* the Conqueror, by granting them the Castles and Possessions of the forfeiting *Saxon* *Thanes*: Some *Tainlands* were granted to the *Normans* with the Title of Earl, some with the Title of Baron, according to the Terms in the Grant, so was the Title of the Tenure, and their Successors

Dugd. Bar.
Prof. 3.

Clauſ. 17.
H. 3.

Dugd. Bar.
68.

Tit. Hon.
661.

Successors invested by the King, into the Honours of their Predecessors, by putting on a Robe, Sword, Banner, &c. and a Charter given in this Form, *Nomen & honorem Comitum vel Baronum*, &c. according to the Honour he succeeded to, by Right of Inheritance from his Ancestor.

The Baronies erected out of the *Saxon* Tainlands and the Baronies by Investiture, being without Limitation, descended to Heirs general, they being Baronies in Fee-simple, and from their Heiresses are descended, the present ancient Barons, *Abergavenny, Audley, de la Warre, Morley, &c.*

Now I proceed to other Barons of Parliament, the Barons by Writ, who when summoned to Parliament by the King's Writ, had Vote there as Peers to the old great Barons.

The Baron by Writ only was temporary and personal, the Writ not ennobling his Blood; the *Barones Minores* summoned to Parliament after the Battle of *Evesham*, were such as the King esteemed for their Learning, Wisdom and Interest, whose Advice and Service was looked upon to be of Service to the King, and being once summoned by Writ, were generally so called during Life; the King not thinking fit to neglect or dishonour a Man of Character, that he had once honoured; but his Son

Par. Sum-
mons Pre-
face.

or

or Successor was, or was not summoned to Parliament as the King pleased.

For Instance, *Ralph de Monthermer*, second Husband to *Joan of Acres*, Widow of *Gilbert de Clare*, Earl of *Gloucester* and *Hertford*, having a great part of the Earldoms in his possession in Right of his Wife was summoned to Parliament by *Edward I.* as an Earl, during the Minority of *Gilbert de Clare*, Son of *Joan of Acres*; and when *Gilbert* came of Age, he was invested into the Honour of the Earldom of *Gloucester* and *Hertford*, and after that *Monthermer* was no more summoned as an Earl, but because the King would not wholly dishonour the Man that had been honoured, *Edward II.* summoned him as a Baron in the second Year of his Reign, and in the other Parliaments to the nineteenth of his Reign when he died; and his Son and Successors were ever after omitted and not summoned to Parliament by his Successor *Edward III.* but in the eleventh of *Edward III.* *Edward de Monthermer* was summoned as a Baron.

Ralph de Camois was summoned to Parliament in the forty ninth of *Henry III.* and ranked in the Roll next the Earls above all the Barons; *John de Camois* his Son was not summoned to Parliament in the Reign of *Edward I.* and his Son *Ralph de Camois* was summoned to Parliament from the

Dan. of
Ed. 1.

Dugd. Bar.
217.

Parl.
Elfing 37,
53.

Parl. Sum.
67 to 129,
193, 194.

Baronage
217.

Parl. Sum.
193.

Parl.
Elfing 39.

Parl. Sum.
3, 93.

Dugd. Bar.
167.

the seventh of *Edward II.* to the ninth of *Edward III.* inclusive amongst the Barons; but neither he nor his Descendants were summoned to Parliament in all the rest of *Edward III.*'s time: In the seventh of *Richard the II.* *Thomas de Camois* was chosen one of the Knights of the Shire of *Surry*, which to be sure he would not have been, if he or his Predecessors had been Barons by Tenure of a whole Barony or made Barons by Investiture: *Dugdale* says, the first mentioned *Ralph de Camois* held half a Barony.

Thomas de Camois petitioned the King to be discharged from serving as Knight of the Shire of *Surry*, and was discharged by the King's Writ, *quia ipse, & quamplures antecessores sui Banneretti fuerunt*; for so was the Barons Peers called, and also Chivaler, and in *Edward I.*'s time they were called *Milites*, and in King *John*'s time Tenants in *Capite*. Parl. Sum. 320.

After *Thomas* was discharged from serving as Knight of the Shire, King *Richard* summoned him to that very Parliament by Writ, and he was summoned to all the succeeding Parliaments to the eighth of *Henry V.* but *Richard Hugh*, and Sir *Roger de Camois*, Heirs and Successors of the said *Thomas*, were never summoned to Parliament.

Several

Anriq.
Parl. 83,
87.

Several other Peers in like manner, the Kings summoned to Parliament and omitted their Children and Successors, if they did not equal their Predecessors in Wisdom, Abilities, Valour, or other remarkable Qualities.

Parl. *Elfing*
46, 13.

Thus it appears that Summons to Parliament by particular Writ, did not convey hereditary Nobility to a Family, hereditary Nobility arising from the original Grants of the *Saxon* Tainlands of the King's Thaness, to the first great *Norman* Barons, and afterwards by Investiture with Sword and Robe with a Charter expressing the Degree, whether of Earl or Baron. Investiture made the hereditary Nobleman, and Charter distinguished the Title whether of Earl or Baron.

Brady's
Tracts 76.

Jan. Aug.
83.

The ancient Barons by Tenure and Investiture, were in Parliament Summons stiled *Barones*, and sometimes *Domini*; but the minor Barons or Peers, were stiled Barons or Bannerets, and after the *French* Wars in *Edward III.*'s Time, the Peer was stiled Chevalier and not Baron; Chevalier being a Title of Dignity, and Baron of Possession, as the King's Man or Baron, that held a Castle or fortified Burgh by Grant from the King with Honours and Manors annexed to the Castle or Capital of his Baronry. Barons were originally created by

Mack.
Preceden-
cy 131.
Parl. Sum-
mons 287,
289. &
passim.

Salkeld
vo. 2, 509.

Te-

Tenure, afterwards by Writ, and last of all by Patent, says *Salkeld*.

Sir *William Dugdale* in the Preface to his second Tome of the Baronage says, that *Edward I.* summoned to Parliament not only such as were Barons by Tenure, but such other Persons of Note, as the King esteemed for their Wisdom and other Qualifications, whose sitting there upon one or more Summons, did not entitle their Descendants to an hereditary Right thereto. Some there were that had but one Summons, others more; yet their Descendants not summoned.

Sir *Edward Coke* says, if a Man be called by Writ to the Parliament, and come and sit in Parliament pursuant to such Writ, his Blood is thereby ennobled; which don't agree with the preceding Instances of *Montbermer* and *Camois*, and the many others of the like Kind that appear in the Summons to Parliament. If a Person have Investiture, and is called by Writ and sits in Parliament, he is Earl or Baron according to the Investiture and Writ.

If the Writ without Investiture of Sword and Robe did enoble the Party, then were the King's Judges, the King's Serjeants at Law; divers Deans and Archdeacons being Treasurers, Keepers of the Privy Seal and other Ministers, and privy Counsellors ennobled in several Parliaments of *Edward I.*

Parl. Summons passim.

Parl. Elsing 36.

Ed-

Edward II. and *Edward III.* for they then had Writs to meet and sit with the Earls and Barons. And these to be sure were neither Barons nor Barons Peers, being summoned during their continuance in Places under the King and no longer.

4 *Inst.* 4. Sir *Edward Coke* shows the Difference in the Form of the Writs to the Barons, and of those to the Justices of the Benches, &c. The Form to the Barons is (says he) *quod interfitis cum praelatis, magnatibus & proceribus, &c.* and the Form of the Writs to Justices of the Benches and their Fellows, *quod interfitis nobiscum & cum cæteris de concilio nostro.* But that Distinction was not always observed in Parliament Writs, for in the Thirty third of *Edward I.* in the Writ to *Henry Lacy* Earl of *Lincoln*, is, *quod interfitis, tractaturi nobiscum & cum cæteris de consilio nostro*; which is the Form *Lord Coke* appropriates to the Justices, as the usual Difference in the Writ to the Justices from that to the Barons.

Parl. Summons 49.

Rel. Spel. 62.

Ben. Abbas 86.

4 *Inst.* 45.

Benedict Abbot of *Peterburgh* in his Account of *Henry II.*'s Parliament at *Northampton*, holden there, *de statutis regni* (says he) *coram Episcopis, Comitibus & Baronibus, & per consilium militum & hominum suorum, &c.* Here *militum & hominum suorum* extend to a Degree below the Barons, which were the Tenants *in Capite*, not *per Baroniam*;

niam, and were not summoned by special Writ, but by a general Writ to the Sheriff, as in King *John's Magna Charta*, which Tenants *in Capite, minores Barones*, or Barons Peers, were by a subsequent Law, not to come to Parliament without special Summons, which in time proved to whom only, and when, the King pleased as before.

Brady's
Tracts
76, 78.
Parl. Sum-
mons Pre-
face.

In the *Saxon* Reigns every Bishop was a Member of the *Witenagemote*, and their Possessions were *Frank almain*, which the Conqueror made subject to Knight Service, and every Bishop held his Possessions by Barony, and was a Member of the *Norman* Parliaments, and so were twenty six Abbots and two Priors that held by Barony: Several other Abbots and Priors that did not hold by Barony were frequently summoned to Parliament as were the Peers, and omitted when the Kings pleased.

MS. Parl.
2 Inst. 585

The Abbot of *St. James by Northampton* being in the twelfth Year of *Edward II.* summoned to Parliament as a Baron, petitioned to be erased out of the Roll of Barons, he not holding by Barony or Knight-Service *in Capite*, his Possessions being *Frank almain*; and his Name was erased out of the Roll, as he desired.

Tit. Hon.
731, 734.

The Abbot of *Leicester* being summoned to Parliament as a Baron, petitioned the King to be erased out of the Barons Roll, for that

O

that

that his Abby was founded by *Robert de Bel-
lamont* Earl of *Leiceſter*, and conſequently
not held *in Capite*, for which Reaſon the
King did grant, *quod idem Abbas, & ſucceſ-
ſores ſui de veniendo ad Parliamenta & Conſi-
lia noſtra, vel hæredum noſtrorum quieti ſint
& exonerati in perpetuum.*

MS Lord
Keeper
Williams,
p. 82.

In the fifteenth of *Edward I. A. D. 1296*,
an Act of Parliament was made by King
and Lay Barons (*Clero excluſo*) as it is re-
ported by *Juel* Biſhop of *Salisbury* againſt
Harding. Folio 620.

Cotton's
Records
322.

And in the eleventh of *Richard II.* an Act
of Parliament was made, though the Lords
ſpiritual abſented themſelves.

Tit. Hon.
751, 755.

The ancient great Barons by Tenure ha-
ving obtained ſuch ſingular Privileges to
themſelves by the great Charter of King
John, and by Conceſſions of *Henry III.*
the Kings took the Conſent of the Ba-
rons in Parliament in making Barons by
Grants of eſcheated Baronies, and in ad-
vancing Barons and Earls to higher Titles,
as *Edward III.* in Parliament made his Sons
Dukes, by inveſting them with the Swords
and Caps of that Degree, and their Charters
were ſigned and ſealed by the King, *his Teſti-
bus*, viz. the Biſhops and Barons in Parlia-
ment.

Cotton's
Records
94.

Daniel
fol. 251.

Cotton's
Records
310, 325,
322, 363,

Richard II. in the Parliament of the twen-
ty firſt of his Reign made five Dukes, viz.
Henry

Henry Duke of Hereford, Thomas Duke of Surry, John Duke of Exeter, Edward Duke of Albemarle, and Thomas Duke of Norfolk, with the Consent of Parliament, as appears in their Charters, viz. *Affensu Prælatorum, Ducum, Magnatum, &c.* But these Dukes made no increase of the Number of the great Barons, they being Earls before; and the King thought fit to have the Consent of the Barons and Earls when he intended these five great Men should have superior Title, and precede the other great Earls.

Daniel 2d part fol. 23.
Brady 2 vol. 392, 399.

Richard II. introduced a new Manner of creating Nobility, which was by Letters Patent, and from that Time the Ceremony of Investiture began to be disused; for the Person ennobled had in his Patent Grant of Sword, Robes, and all the other Ornaments and Privileges of Barons by Tenure or Investiture, and was (upon Solemnities) intitled to appear in the Robes of the Degree conferred on him in his Patent, whether of Duke, Earl or Baron.

John de Beauchamp Steward of the Household to Richard II. was by him created by Patent a Baron, by the Title of Lord Beauchamp of Holt, Baron of Kiderminster, to him and his Heirs Male, and this the first Baron that was created by Patent only, before which Time all Barons were by Writ, Possession, and Investiture.

Dugd. Baron. 250.
Parl. Elsing 34.
Daniel 2d part fol. 18.

9 H. III. 2.
13 Edw. I.
cap. 42.

The holding *per Baroniam* a whole Barony often occurring in the ancient *English* Historians, I shall endeavour to show what was a whole Barony: The pretended ancient Treatise termed, *Modus tenendi Parliamentum*, says an Earl's Tenure must be twenty Knights Fees, and a Baron's, thirteen Knights Fees, and one third of a Knight's Fee; which Rule won't agree with Fact, for Instance.

Madox.
464.

Roger Bigot Earl of *Norfolk* paid Aid to *Henry III.* for one hundred and twenty five Knights Fees, and for thirty seven and half *De novo Feofamento*, yet he held his Earldom but by five Knights Fees.

Dugd. Baron.
326.

Geffry de Talbot held twenty Knights Fees of *Henry I.* and was neither Earl nor Baron, and none of his Successors summoned to Parliament till *Gilbert de Talbot* was in the fourth Year of *Edward III.* and then as a Banneret or Baron's Peer, he not being a Baron.

Summons
Parl. 156.

Dugd. Baron.
325.
Willis
2 part 3c.

Robert de Courtney in the seventh of King *John* had Livery of the Barony of *Okehampton*, in Right of his Mother Baroness of *Okehampton*, and *Robert* held with the Barony ninety two Knights Fees *in Capite*, and yet was not an Earl, which Title the Family did not enjoy till in *Edward III.*'s Time, *Hugh Courtney* was Earl of *Devon*, by being descended from *Isabel de Fortibus* Countess of *Devon*.

The

The whole Barony is only a Distinction from the split Baronies in King *Stephen's* and King *John's* Time; for that Castle or Honour was a Barony that was granted by *William* the Conqueror *per Baroniam*, whether there were five or fifty Knights Fees granted in Barony, there was no certain Number of Knights Fees in a Barony. The Distinction of whole Barony in *Magna Charta* is only to ascertain the Reliefs. Holding one hundred Knights Fees *in Capite* of the King in Knight Service, will not make such King's Tenant a Baron; but he that held but three Knights Fees in Barony, was as much a Baron of Parliament, as he that held a hundred Knights Fees in Barony.

In *Henry II.'s* Time, the Lord of *Berkley* Tit. Hon. 741^e Castle held by five Knights Fees in Barony, and by Inquisition taken in *Edward III.'s* Time, it was found that the Lord of *Berkley* Castle held by Barony by no more than three Knights Fees, yet it was determined, that he was a Baron of Parliament. The Conqueror's Baron was he to whom he committed the Government of a Castle, Burgh or Tithing, to hold of him as his Man or Baron, and the Earl had the Command of a whole County committed to him to hold of the King as his Man,

The Reliefs of Earls and Barons being uncertain before *Magna Charta*, they were there- 9 A. III. 2.

therein ascertained, that the Earl should pay for Relief for a whole Earldom a hundred Pound, and for a whole Barony a hundred Marks, and Reliefs being the fourth part of the Value of the Fee, consequently the Value of a whole Earldom in *Henry III.*'s Time was reckoned four hundred Pound a Year, and a whole Barony four hundred Marks a Year, and they that had less, should pay less. Whole Baronies and part of Baronies are also mentioned in *Westminster* the second.

1 *Inf.* 9. 16.
69. 83. 97.

13 *Ed.* I.
41.

The Heir of a Knight was by *Magna Charta* to pay 5 *l.* for Relief, which being a fourth part of the annual Rent of the Fee, the Knight's Fee was 20 *l. per Annum*, and the whole Earldom twenty such Knights Fees, and a whole Barony thirteen Knights Fees, and one third of a Knight's Fee.

Madox
464.

The whole Barony in *Magna Charta*, and the old Historians relates only to Reliefs; *Bigod* in *Henry III.*'s Time as before held his Earldom by but five Knights Fees, paid Relief for his Earldom but at the Rate of five Knights Fees, *viz.* 25 *l.* but then he paid Relief for the rest of his Knights Fees according to the Number he had, which was above a hundred and fifty besides the five annexed to his Earldom.

In *Henry II.*'s Time, the Lord of *Berkley Castle* as before, held by five Knights Fees
in

in Barony, and in *Edward III.*'s Time, he held but three Knights Fees by Barony, and the Barony was to pay but 15 *l.* for Relief; but then he was to pay Relief for such other Knights Fees as he held, that were not held in Barony.

The pretended ancient *Modus* seems to be taken from *Magna Charta*, and not *Magna Charta* from that.

The Barony by Tenure was Fee-simple to him, and his Heirs general; upon the Death of such Baron, the Son had Investiture into the Honour of his Father, as an honourable Confirmation of precedent Right, a Livery of his Predecessor's Honour, as *Hoveden* in the Case of an Earl, *Accingere gladio comitatus patris sui*. King *John* invested *William Martial* with the Sword of the County of *Pembroke*, and *Geofry de Mandevil* with the Sword of the County of *Essex*, and this was not a new Creation, but Livery of their Earldoms to them, they being in Right of their Wives both intitled to Earldoms, *Martial* having married the Daughter and Heir of *Richard de Clare* Earl of *Pembroke*, and *Geofry de Mandevil* Son of *Beatrice* Daughter and Heir of *William de Mandevil*, Earl of *Essex*: This Livery was the King's Favour, for they were not Heirs, tho' their Sons would have been to those Earldoms in Fee-simple. The Huf-

Tit. Hon.
677.

bands were in Possession of their Ladies Earldoms, and sat for them in Parliament.

Before I conclude this Chapter of the noble Members of great Councils or Synods, I must take in what Antiquity affords us of the Ladies.

*Plutarch
de virtut.
mul.*

Plutarch says, Women had the Prerogative to sit and deliberate in great Councils, in Cases relating to civil Administration, and also in Debates about Peace and War.

*Tacitus
vita Agri-
cola.
Epinomis 6.*

And *Tacitus* speaking of the *Britons*, says, *Sexum in imperiis non discernunt*. The unanimous Heroine *Boadicia* Queen or Princess of the *Iceni*, so successfully commanded the *British* Armies, as to beat and conquer the *Roman* Vice-Roy, or Lieutenant

*Tacitus
Vita
Agricola.*

Suetonius Paulinus: And no doubt, that noble Lady was a deliberative Member of the Council where the Resolution was taken to fight the *Romans*, and that she should command the Forces. And *Cæsar* says, the *British* Women were made use of in Court, in Council, and in Camp.

*Cæsar Eng
117.*

*Bernard
359.*

Heliogabalus introduced his Mother into the Senate, and she took her Place there by the Seats of the Consuls, and was present at passing a Decree of the Senate. This Emperor made the first Senatress, he created a little Senate of Women, which met on *Collis Quirinalis*, under the Direction of *Semiamira*, and the Laws they made concern-

*Ælius
Lampri-
dius.*

*Hatches
271.*

ing

ing the Ladies, are, what Cloaths every one should wear, who should give Place to whom; who should salute whom, who go in a Coach; who ride upon a Horse; who upon an Ass; who go in a Litter drawn by Mules; who to be drawn by Oxen; who carried in a Chair; and whether the Chair should be of Leather, or inlaid with Bone, or Brass, or Ivory, or damasked with Silver; and who should wear Gold or Jewels on their Shoes, and such like Laws, particularly mentioned by *Ælius Lampridius* in his Life of *Heliogabalus*.

The *Roman* Matrons anciently used to assemble in Council upon certain Occasions, in which Assembly the Priestesses, that is, such as were by the Law devoted to the Service of the Gods, had the Preheminence. *Flavius Vopiscus* in his Life of the Emperor *Aurelian*, says, that Emperor was for setting up a Senate of Women, for reviving the ancient Privileges of the *Roman* Women, but he lived not to finish it.

Bernard
2 vol.
p. 284.

The Ladies of Birth and Quality sat in Council with the *Saxon Wita's*; the Abbesses *Hilda*, says *Bede*, presided in an ecclesiastical Synod.

Bede lib. 3.
cap. 25. P.
135. lib. 4.
cap. 23, 24.

In *Wightred's* great Council at *Beoncelde*, *A. D.* 694, the Abbesses sat and deliberated, and five of them signed the Decrees of that Council along with the King, Bishops, and Nobles.

Spel. Con.
Tom. 1.
p. 189,
191, 348.

In

Savil. Edit.
Ingulph.
862.

In *Ethelwolf's* Parliament at *Winchester*, A. D. 855, wherein the tenth Part of the Kingdom was given to the Church, the Law passed, says *Ingulphus*, *Præsentibus & subscribentibus Archiepiscopis, & Episcopis Angliæ universis, nec non Beorredo Rege Merciæ & Edmundo East-Anglorum Rege, Abbatum & Abbatissarum, Ducum, Comitum, Procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes Regium Cbiographum laudaverunt, Dignitates vero sua nomina subscripserunt.*

MS. Lord
Keeper
Williams
25.

Ant. Parl.

75.

Tit. Hon.

729.

Pat. 5.

Ed. 1.

King *Edgar's* Charter to the Abby of *Crowland*, A. D. 961. was with the Consent of the Nobles and Abbesses who subscribed the Charter.

In *Henry III.* and *Edward I.'s* Time, four Abbesses were summoned to Parliament, *viz.* of *Shaftsbury*, *Berking*, *St. Mary of Winchester*, and of *Wilton*.

Parl. Summons 265.

Ant. Parl.
88.

In the thirty fifth of *Edward III.* were summoned by Writ to Parliament, to appear there by their Proxies, *viz.* *Mary* Countess of *Norfolk*, *Alienor* Countess of *Ormond*, *Anna Despenser*, *Philippa* Countess of *March*, *Jobanna Fitz Water*, *Agneta* Countess of *Pembroke*, *Mary de St. Paul* Countess of *Pembroke*, *Margaret de Roose*, *Matilda* Countess of *Oxford*, *Catherine* Countess of *Atbol*. These Ladies were called, *Ad Colloquium & Tractatum* by their Proxies, a
Pri-

Privilege peculiar to the Peerage to appear and act by Proxy.

C H A P. IV.

The Procuratores of the Saxon Witenagemote; and the Knights, Citizens, and Burgesses of the Norman Parliaments.

IN the preceding Chapter I have treated of the *British* and *Saxon* Nobility that were Members of the national Councils. In this Chapter I shall show in what manner the inferior People's Interest was taken care of in Parliament.

As to the *British* Councils (as before mentioned) the Members were the *Edlins*, *Druides*, and Governors of the People, these appeared in Person, represented themselves as the Nobility now do, and took upon themselves the Care of the Interest of the People within their several Jurisdictions.

When the *Saxons* conquered the *Britons*, the general Leader and the *Capitanei* divided the *Britons* Lands amongst themselves by Agreement, in Proportion to the Number each Captain commanded, he being obliged
to

to provide for the Men in peace that were under his Command in the War.

These Captains were the Members of the *Saxon* Councils, the Commanded had no certain Estate in the Land they occupied, being removeable at the Pleasure of their Lord the Captain or *Thane*, were not Members of the Common-wealth; the whole Interest in Land being in the *Thanes*, who were the *Saxon Wita's* or Nobles, and were the standing Members of the *Witenagemote*, they being the King's Collegues and Companions in War and in Council.

In process of time, the *Cburles*, i. e. Husbandmen (by the Indulgence of the *Thanes*) got some Property in Land, from being at first Servants in War and in Peace, in time grew up to be Tenants at Will, yielding and paying uncertain Rents and uncertain Services; from a farther Indulgence or Indolence of the *Thanes* in taking from the Son of a Tenant, the same Rent and the same Services yielded by his Father, there grew up a certain Interest in the Tenant, in the Lands he occupied under the *Thane*, wherein by long Usage and Custom he had got such an Interest, as not to be removed from his Tenancy at the arbitrary Will and Pleasure of his *Thane* or Lord.

The *Thanes* in the great Councils represented their Tenants, and took care of their
In-

Interests there, but when the *Cburles* had obtained a certain Estate in the Lands they occupied, being free'd from the arbitrary Will and Pleasure of their Lords, they voluntarily appeared at the great national Assemblies of the *Wita's*, to see and hear what new Laws were made, and in what manner they were to pay obedience thereto. How they appeared at great Councils, and what Interest they had there, shall appear in the Sequel.

The first faint Glimpse that History affords us of the *Cburles* or Commons having Representatives in the *Saxon Witenagemotes*, was in that held under *Kenwolf* King of *Mercia*, A. D. 811, where a Charter was signed by the King, who therein particularly recites the several Degrees of Men present at that Assembly, viz. *Merciorum Optimates, Episcopos, Principes, Comites, Procuratores, meosque propinquos, nec non Cuthredum Regem Cantuariorum atque Subredum Regem Orient. Saxon. cum omnibus qui testes nostris Synodalibus Conciliabulis aderant.*

Tyrol
XCV.

Annals of
Winchel-
comb.

The next *Saxon* King in whose Time is any mention made of the Commons being present at a great Council is *Ethelwolf*, who in the Year 855, held a *Witenagemote* at *Winchester*, wherein the Tenth of the whole Nation was given to the Church by the King,

Savil's
Edit. of
Ingulph.
863.

The Antiquity of National

King, *Baronibus & populo infinita multitudine, qui omnes Regium Chirographum laudaverunt, Dignitates vero sua nomina subscripserunt*, as before mentioned in the Paragraph of Ladies in Parliament.

Æthelstan held a *Witenagemote* at *London* wherein were made the *Judicia civitatis Lundoniæ*, by the Advice of the Bishops, Earls, and Aldermen, to which Constitutions, *tam comites quam coloni* swore Observance.

Acta Regia
41.

Æthelstan's Charter to the Abby of *Abbingdon* mentions *procuratores*; *Hæc Charta in villa regali quæ Ætwelpe nuncupatur, Episcopis Abbatibus, Ducibus, patriæ procuratoribus, regia dapfilitate orantibus perscripta est.* This Charter was not made in Parliament, being wholly the King's Bounty, and witnessed and approved by the Nobles and others that were present, who all applauded the King's religious Generosity.

Archæion
97.

4 *Inst.*
320.

Canute in the first Year of his Reign held a *Witenagemote ex more* at *Winchester*, at *Christmas* Festival, where his Code of Laws was made with the Advice and Consent of his Nobles.

Canute in the fifth Year of his Reign, held a *Witenagemote* of his Archbishops, Bishops, Dukes, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum Populi multitudine copiosa.*

In

In *Edward the Confessor's Law de Apibus*, Li. Ed. Conf. 8.
 a Tenth is confirmed to the Church, à Re-
ge, Baronibus & Populo.

In the *Witenagemotes* of the last mentioned Kings upon a cursory View of the Laws, the common People seem to have some Share in consenting to them: How far their Consent was necessary I now proceed to show.

To begin with the *Witenagemote* of King *Kenwolf*, where is the first mention of *procuratores*; but those I take to be rather Proxies for absent Nobles than for the common People, from the Manner of placing them next to the Earls and before the Kings *pro-pinqui*; Order or Precedency of Degrees being observed in those times, it is very improbable that Proxies of the common People should be placed before the King's Relations.

The next *Witenagemote* where is any mention of Commons is that of King *E-*
thelwolf, where it seems were assembled a
 Multitude of People, when the Law was
 made that granted the Tenth to the Church,
 in *Ingulph's* Words, *viz. Præsentibus, & sub-*
scribentibus, Archiepiscopis, & Episcopis An-
gliaë univèrsis, nec non Beorredo Rege Merciaë,
Edmundo East-Anglorum Rège, Abbatum &
Abbatissarum, Ducum, Comitum, Procerumque
totius terræ, aliorumque fidelium infinita mul-
titudine,

Prid. Fish.
175.

Savil. Edis.
Ingulph.
263.

The Antiquity of National

titudine, qui omnes Regium Chirographum laudaverunt, Dignitates verò sua nomina subscripserunt. 'Tis plain from this Account of *Ingulph*, that the enacting Part was by the King and Nobles only, and that the common People was not Party thereto, they only applauding what the King and Nobles did ; for none signed the Law but the Nobles.

Tho' *tam Comites quam Coloni* swore to the Observance of *Ætbelstan's judicium civitatis Lundoniæ*, yet the enacting Part is entirely and solely in the King, the Bishops, Earls and Aldermen, as appears by these Words, *Hoc est consilium quod Episcopi & Præfeti edixerunt*, as mentioned in the third Chapter of the Lords in Parliament.

Tho' *Edgar's Witenagemote* at *Wulfamere* was so numerous that no Room could hold them, yet it appears not, that the Multitude were any otherwise concerned in confirming the Charter there made, than by giving a popular Applause to what was done by the King and Nobles.

Canute's Witenagemote of Archbishops, Bishops, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*, is of the same nature with the before-mentioned, the Multitude of People were only Spectators, who generally flocked to the Courts *de more* to be Spectators of the

the King's Magnificence, when they set at the Head of there Nobility with Crown and Royal Robes, when there was plentiful and splendid Feasting as well as Consultation about the publick State of the Nation.

The *Confessor's Law de Apibus, à Rege, Baronibus & Populo*, carries some Shadow of the Commons Consent to that Law, but his *Law de Regis officio*, shews the Substance in these Words, viz. *debet etiam Rex omnia ritè facere in regno, & per judicium procerum regni*; and farther in the same Law, *debet judicium rectum in regno facere, & justitiam per consilium procerum regni sui tenere*, as before mention'd in the Chapter of Barons. What were the *Proceres* in the last mentioned Law is well accounted for in his twenty first Law, *de Baronibus qui suas habent curias & consuetudines*, viz. *Archiepiscopi, Comites, Barones, & omnes qui habuerint Sacam & Socam, Thol, Theam & Ingfangthefe, etiam milites suos, & proprios servientes, scilicet dapiferos, pincernas, camerarios, pistores & cocos sub suo Friburgo habeant: Et item isti suos armigeros vel alios sibi servientes sub suo Friburgo. Quod si cui forisfacerent, & clamor vicinorum de eis assurgeret, ipsi tenerent eos reëtitudini in curia sua; illi dico qui haberent Sacham, Socam, Thol, Theam & Ingfangthefe. i. e. Lords of great Seigniories.*

LI. Ed.
Conf.
8. 17. 21.

P

From

From the last mentioned Law may be gathered, that the Knights mentioned to attend *Canute's Witenagemote* were not constituent Members thereof; for the lowest degree of Members of the *Confessor's Parliament*, were such as had Knights dependant on them in their Friburgh, Soke or Seignory, and these great Men represented themselves, and also the Knights and Freemen of their Seignories. The *Theaw* or under *Thane* that was a Dependant upon the great *Thane*, was not a Member of the *Saxon Parliament*, being represented there by his Chief, his *Thane*, as the *Norman Vavasor* or Knight, that held of a great Baron in mean Tenure, was not a Member of the *Norman Parliament*, he being represented there by his great Baron of whom he held.

Now I proceed to the Commons of the *Norman Parliaments*: *William* the Conqueror in his Charter of Ratification of the Liberties and Privileges of the Church of *Westminster*, instead of *cum multis aliis* hath these Words; *cum multis præterea illustrissimis virorum personis & regum principibus diversi ordinis omiſſis, qui similiter huic confirmationi piſſimo affectu testes & fautores fuerunt. His etiam illo tempore à Regia potestate è diversis provinciis & urbibus, ad universalem Synodum, pro causis cujuslibet Christianæ Ecclesiæ audiendis & tractandis,*
ad

Orig. Jur.
16.

ad præscriptam celeberrimam Synodum, quod Westmonasterium dicitur, convocari, &c.

These of divers Orders summoned from Counties and Cities, were not Knights, Citizens and Burgeses (as some would have them) but were Ecclesiasticks of several Orders and Degrees, that were summoned to that Synod; for the Commons never had authority given them by the Writ of Summons, in after times, so general as the Words, *audiendis & tractandis* aforefaid imply.

When the Commons were regularly called to Parliament by *Edward I.* the Summons to them was only, *ad audiendum & faciendum & consentiendum*, whereas the Summons to Bishops and Barons was *de arduis negotiis regni tractaturi & consilium impensuri*. The Commons were not consulted in State Affairs about Peace or War, or making of Laws, their Business being only to consent to Laws made by the King and Barons, and to consent to Aids and Subsidies and such like, *ad habendum commune consilium regni de auxiliis assidendis*.

The first Part of the Writ to the Commons, is to consent to such ordinances as the Peers shall make; the next Part of the Writ, is to hear and do what the King shall farther require of them: This is the Substance of the ancient Writs, the farther Enlargement of the Privileges of the Com-

Parl.
Antiq. 24.
84.
Parl. Sum.
7.
4 Inst. 10.
Parl. Sum.
Preface.

Rel. Stel.
64.

Filmer,
127, 136.
Journal
18.
James 195.

mons in Parliament will appear in the Chapter of Privilege.

Paris
Anno.
1100.

Henry I. (says *Matthew Paris*) summoned to his Coronation *Clerus Angliæ & Populus universus*; The King in his first Law owns his Election to be made by the Barons only, in these Words, *Sciatis me Dei misericordia & communi consilio & assensu Baronum Regni Angliæ ejusdem Regni Regem coronatum esse*, and in his second Law, the Consent of the Barons is mentioned, but Consent of Commons occurs not in any of the ninety four Chapters of his Laws; from whence I conjecture *Paris's* *Clerus & Populus universus*, may be rendered in *English* Lords Spiritual and Temporal.

Archaion,
175.

Eadmer and *Florence of Worcester* who flourish'd in this *Henry's* Time make no mention of Commons in the Parliament of *Salisbury*.

Eadmer,
67, 117.

Eadmer's Words are, *factus est conventus Episcoporum, Abbatum & Principum totius regni apud Sersberiam*, instead of his Word *Principum*; other Authors make use of *Baronum*, which in this Case is the same, both Words meaning the great Tenants in *Capite per Baroniam*.

Florence calls this Parliament *conventio Optimatum & Baronum totius Angliæ apud Salisberiam*.

Polydore Virgil and his Followers from the *populus universus* *Paris*, advance that the Commons were a constituent Part of
Henry

Henry I's Parliaments, and not a tumultuous Body of the People, the People in gross but a select Number; as the *populus Romanus* was not all the People of Rome, but only those who had a Vote in the passing or rejecting a Law; but none of them make out how Commons were elected in Henry I's time to represent the People.

As said before, the People voluntarily went to the Courts *de more* and generally applauded such Laws as were made by the King and Nobles, which to them was Satisfaction that all the By-standers approved of their Decrees, as an ancient Author expresses it, *tum demum leges vim & vigorem habuerunt, cum fuerunt non modo institutæ, sed firmatæ approbatione communitatis.* Mirror
Pref.

King Stephen in his Charter of Confirmation of Liberties, owns himself to be chosen by Clergy and People in these Words, *Ego Stephanus Dei Gratia assensu cleri & populi in Regem Angliæ electus*: The *cleri & populi* therein mentioned, can't be extended any farther than Lords Spiritual and Temporal, there being no mention in the Charter of *milites* or *liberi homines*. Malms-
bury.

There appears no Hint of parliamentary Commons in King Stephen's time; he indeed made the Members of Parliament more numerous than before, by splitting Baronies that fell into his Hands by For-

feiture, into small Tenancies, which being held in *Capite per Baroniam*, the Possessors of them were all Members of Parliament, which proved such a Grievance to the great old Barons, that they contrived a Redress in the *Magna Charta* they obtained of King *John*.

Ben. Abbas
86.

The Account of *Henry II*s Parliament of *Northampton* as given by *Benedict* Abbot of *Peterburgh* mentions Knights, thus, *circa festum S. Pauli venit Dominus Rex usque ad Northampton & magnum ibi celebravit concilium, de statutis regni sui, coram Episcopis, Comitibus & Baronibus terræ suæ & per consilium militum & hominum suorum*. The *militum & hominum suorum* are his Tenants that held of him in *Capite*, not elected Knights to represent the Freeholders, but were Barons Peers, as all Tenants in *Capite* were, and summoned when the King pleased. *Paris, Wendaver* and *Gervase* all agree that the King's Tenants in *Capite* were summoned to that Parliament, *viz. tenere de Rege in Capite, habere possessiones sicut Baroniam*, and none of them mention any other Knights. These Tenants in *Capite* are not expressed to hold *per Baroniam*, but *sicut Baroniam*.

In the seventeenth of King *John*, *Anno Dom. 1215*. the Barons obtained a Confirmation of ancient Liberties and new Privileges

vileges and for the more firm establishing them, it was conceded by the King, that the Barons should choose twenty five of their own Body to have Power over all Judges, Justices and Ministers to see the great Charters observed; but as yet no Representatives of the generality of the Commons in Parliament.

By King *John's* Charter the great Barons were to have particular Summons, and the rest of the Tenants *in Capite* were to be summoned in general by the Sheriffs; so many small Tenancies being made by King *Stephen* and King *John* that the Tenants *in Capite* made the Parliament too tumultuous and numerous, wherefore the Sheriffs returned Proxies for them, but not for the Freeholders in general; for such as held freely of the great Barons, were by them represented, they taking care of their Tenants Interest in Parliament: The common People were represented in Parliament by their chief Lords of whom they held.

Rel. Spel.
63, 64.

In the thirty second of *Henry III.* Anno *Brady* 627. Dom. 1258, in the Parliament of *Oxford* it was agreed that twelve Persons should be chosen to represent the Commons in Parliament, but those elected were Bishops, great Barons and Tenants *in Capite*, as were the Patrons of the *Roman Plebeians* chosen out of the *Patricians*: These Representa-

tives of the Commons were chosen by Vertue of the Constitutions of *Oxford*, which both King and Barons swore to observe, but these Constitutions were soon dropt,

This King in Consideration of Subsidies made frequent Concessions to his Barons and People, which were not very lasting in his unsettled Reign.

Rot. Paten,
42. H. 3.

In the forty third Year of his Reign he sent a Charter to each County of *England*, publishing his Resolution to take the Advice of his Parliament, and in the Charter expresses who were to be the Members thereof. The Charter is writ in the *Norman Saxon* Dialect and Character, translated into *Latin* by Mr. *Somner*, so much of it as relates to my Subject, is in these Words, viz, *Vobis omnibus notum facimus, quod volumus & concedimus, ut quod consilarii nostri omnes, sive major pars eorum, qui fuerint electi à nobis & à gentis plebe, &c.*

Somner's
Dist. voce
Unnan.

Those Members of Parliament that were included in the Words, *electi è nobis*, were the great Barons that had particular Letters of Summons directed to each one of them; those meant by *electi à gentis plebe*, were such as were returned by the Sheriffs, which were the lesser Tenants *in Capite*. In those early Days there was a great Power in the Sheriffs, the King's Officers, in returning the King's Tenants; they were to re-
turn

turn all, but many got themselves excused by agreement amongst themselves, and the Sheriffs, those that went, were the *electi à gentis plebe*.

And the Sheriffs were afterwards very partial in returning Burgeses for Boroughs, they returning Burgeses for such Boroughs as they pleased and omitting others, till Acts of Parliament were made to direct and regulate their Proceedings.

*Henry III*d. being under great Difficulties with his Barons and great Men in the forty ninth Year of his Reign submitted to have a Parliament called in such Manner as the Barons directed; and *Simon Montford* Earl of *Leicester* being the Head of the confederate Barons, that Parliament was generally called *Montford's* Parliament.

In this Parliament of the forty ninth of Parl. Sum. the King, he sent Writs to the Bishops, ^{5.} Abbots, Priors, Earls and great Barons particularly, and to the Sheriffs of the several Counties to return two Knights for each County, two Citizens for each City, and two Burgeses for each Borough. And this was the first Parliament of Lords Spiritual and Temporal, Knights, Citizens and Burgeses, when the King was in the Hands of *Montford*.

After the Defeat of *Simon Montford* and the Barons at the Battel of *Evesham*, the
King's

King's Affairs took a Turn to his Advantage, and to the rest of the Parliaments of his Reign he summoned none but Lords Spiritual and Temporal and Tenants *in Capite*, wholly dropping Knights, Citizens, and Burgeses; and so they were in *Edward I's* Reign, till in his eighteenth Year he summoned Knights, Citizens and Burgeses, and in his twenty third Year and always afterwards.

Brady 649.
Parl. Sum.
7.

The Tenants *in Capite* that held not *per Baroniam*, were summoned to Parliament by general Writs to the Sheriffs to summons all the Tenants *in Capite* within their Bailiwicks; and these Tenants *in Capite* were before the forty ninth of *Henry III*d. the Representatives of the Commons, but several of them, who for their Prudence, military Valour, Loyalty, and other remarkable Qualifications, being well esteemed by the Kings *Henry III. Edward I. II. and III.* had Special Writs directed to them, when and as often as the Kings thought fit to require their Advice, who being only Knights, had the Title of Chivaliers and were called Peers as being *Pares Baronum*, when they were summoned by Special Writ, as before mentioned in page 187, where it appears some were summoned once, twice, and more times, and some during their Lives, and in some Writs there were, *hac vice tantum*, and their Descendants omitted at the King's Pleasure. *Edward*

Parl. Sum.
Preface.

Edward I. instead of the Tenants *in Capite* that were *Barones minores*, by whom the Commons were for the most part formerly represented in imitation of *Montford* and the Barons that rebelled against his Father, caused a certain Number of Knights for the Shires, Citizens for the Cities, and Burgessees for the Boroughs, to be elected and sent as the representative Body of the Commons.

In the Writ of Summons to the Parliament of the eighteenth of *Edward I.* the Sheriffs are commanded to cause two or three of the discreetest and ablest Knights to be chosen for each County, to have full Power for themselves and the whole Community of the Commons of the County to consult and consent for themselves and that Community, to such things which the Earls, Barons and great Men shall think fit to agree upon.

Read on
Stat. vo. 4.
pag. 337.

The Proctors of the Clergy sometimes appeared in Parliament as Spiritual Assistants, to consider, consult, and consent, but had never Votes there.

4. Inst. 4.
21 Rich. 11.
cap. 2. 12.

One of *Edward II.*'s Parliaments was called Parliament *de la Bond*, from the Barons coming to Parliament armed against the two *Spencers*, wearing colour'd Bands upon their Sleeves for Distinction.

Dugd.
Baron.

C H A P.

C H A P. V.

Burghs or Boroughs, their Rise and Antiquity, and when they first sent Burgesses to Parliament.

TH O' the old *Britons* were unletter'd and barbarous; they either from Information, their own Judgment, or some how or other, governed the *British* Nation much after the *Roman* Manner in the Article, that is the Subject of this Chapter. The *British* Court of the Street or Village where the *Druides* presided both as Priest and Judge, pretty nearly resembled the *Roman Curia*, with its Priest the *Curio*. During the Continuance of the *Roman* Government in *Britain*, Markets were at the Gates of the *Roman* Camps, Castles and Forts, to supply the Garisons with Provisions which the Countrymen brought in to sell there, and the Governors of those Camps, Castles and Forts, appointed an Officer to preside in such Markets to see that the Provisions brought to the Gates were wholesom and good, which Deputy also had Orders and Power given him to determine all Matters of Difference that should arise about Rights and

and Properties, of the Goods brought thither for Sale by the Country-People.

The Country-People at first made use of Tents or Booths to shelter themselves and their Goods from Extremities of Weather; afterwards they built little Huts, and then Dwelling-houses, before the Gates of Castles, 1 Inst. 109. and so grew up Boroughs and Cities, Prescription Markets, Officers of Justice that judged Men and Matters there.

The Saxons followed the same Method, Li. Æthelst. as appears by Æthelstan's Laws, *Nemo extra oppidum, nisi præsentate oppidi præposito aliisve fide dignis hominibus, quicquam emito.* 12. The Word *oppidum* is in the original Saxon Fort, *i. e.* Castle, or fortified Place, *i. e.* Mirror, 14. City or Borough.

Castles, Forts, Cities and Boroughs in the Saxon Times had many and great Privileges which they prescribed to, from immemorial Custom and Usage, not only by their Officers to determine Market-Rights of buying and selling Goods, but also to judge Criminals and to determine civil Controversies between Man and Man.

These Rights continued in the Norman Archibion, Reigns, being confirmed by William I. in 171. his sixtieth and sixty first Laws, where it is expressed that there shall be no Fairs or Markets except at Castles, Cities, and Boroughs, where the Laws and Customs of the

The Antiquity of National

the Realm, common Justice, the Dignity and Rights of the Crown or Privileges of the People cannot be injured; Crimes against the King's Crown and Dignity, and other criminal Matters, and also Justice between Man and Man, Rights of Property, to be heard, judged and determined according to Law, by the Lords and Constables of Castles, by the Bailiffs of Cities and Boroughs in Conjunction with legal Assessors: For (says the Law) Castles, Cities and Boroughs were at first founded and built for the Defence of the Nation and People, to that end fortified to be of Defence against foreign Enemies and Invaders; Judges and Ministers were appointed to dispense Judgment and Justice to the People.

1 Inst. 109.

The *English* ancient Boroughs, that were not incorporated by Royal Charters, arose from Jurisdiction military or civil: Those from military Jurisdiction I have already given a short Account of; it remains to give account of such as arose from civil Jurisdiction.

The least Jurisdiction of the *Saxons*, was the Friburgh or Tithing, called in the North Parts of *England*, *Tienmantale*, in *Latin*, *Decuria*, *decemvirale collegium*, a Society of ten Housholders that were bound for one another to the King's Peace.

The

The next superior Jurisdiction was the Hundred that had Jurisdiction over ten Tithings or a hundred Families; and all Persons were to be under Surety of the Peace enter'd into the *Decenna* or Hundred Court or Tourn.

Some great Lords of Castles or fortified Towns had in their Sokes or Manors severall Villages appendant thereto, wherein they had the same Jurisdiction with the *Decanus* in the *Decenna*, and such Castle or fortified Village was termed a Borough.

The Castles and fortified Places of the King's Demains committed to the Custody of Constables or Deputies, were also Boroughs, in which the Constables or Deputies had Jurisdiction in Cases criminal and civil.

The Lords of Boroughs had the Tolls and Duties thereof and also the Rents of Houses and Lands, which were at the arbitrary Will of the Lords, and were no otherwise represented in Parliament than by their Lords, who took care of the Interest of their Tenants, in all Royal Aids and Subsidies, the Ease of the Tenants rendring them more ready and able to pay to their Lords their Rents and Duties.

When a Lord had in a Capital Town of his Soke, Thol, Theam, and Inffangthese, with View of Frankpledge, Pillory, Ducking-

*11. Edw.
Conf. 21.*

Ducking-stool, and other Ensigns of Jurisdiction, such Place was esteemed a Borough, called in *Edward the Confessor's Law* Friburgh.

Whilst the Inhabitants of a Lord's Borough paid to the Lord uncertain Rents, Duties, and Services they were in Villainage: when the Burgeses had obtained Favour of their Lord to be under certain Rents, Duties, and Services, Villanage ceased, and then they became Tenants in free Burgage, and the Borough a free Borough. And when Burgeses were summoned to Parliament, such free Borough sent Burgeses to the Parliament, as an ancient free Borough before time of Memory; this is the Borough by Prescription without any Charter of Incorporation: And when such Borough was to be represented in Parliament, the Resients elected some of their Number, and the Lord thereof made Return of the Persons chosen to the Sheriff. Where the Lord of the Manor, Headborough, or Constable make Return of Burgeses to Parliament, that is a certain Indication of an ancient free Borough by Prescription.

The Lord of a free Borough gathered his certain Rents, Tolls and Duties, by his Steward, Bailiff or Officer of his own appointing. In some Honors, Manors, and
Boroughs,

Boroughs, the Custom grew up that the free Tenants or free Burgeses should take it in Turn to gather the Lords Rents, &c. and during the time he continued in such Office he was called the Lord's *Reve*: This Custom still is continued in several Manors.

Some Lords of Manors and Boroughs granted their Demeans to the Burgeses in Fee-Farm Rent certain, and the Burgeses were to make the best of the Lord's Demeans, paying to the Lord the certain Rent; for Instance,

The Borough of *Plympton* in *Devonshire* Willis, vol. 2. 330. is recorded in Domesday under the Title of *Terra Regis*; it was the King's Town but not a Borough, till so made by *Baldwin de Rivers*, who fortified it and endowed it with Borough Privileges, as appears by his Charter bearing Date the 25th of *March* 1241. the twenty sixth of *Henry III.* in these Words, Firma Burg. 42.

' *Baldwin de Redvers*, &c. Be it known, that we have granted to our beloved Burgeses of *Plympton*, the Borough of *Plympton*, with the Markets, Fairs, and every thing thereto belonging, to have and to hold of me and my Heirs for ever (as fully and freely as the Citizens of *Exeter* hold their City of the King, &c.) paying yearly 24 l. 2 s. 2 d.' This Town Dugd. Baron, 256. was granted to *Richard de Rivers* first Earl of *Devon* by *Henry I.* as appears by an

Q Inspexi-

Inspeximus of the thirteenth of *Edward III.* who confirmed the Charter of *Baldwin*.

Willis, 104,
108.

Aylesbury in *Buckinghamshire* is recorded in *Domesday* for ancient *Demean*, and in the fifth of King *John* was by the King granted to *Geoffry Fitz Piers* Earl of *Essex*; which being an ancient Borough by Prescription, when Burgesſes were summoned to Parliament the Lord of the Borough returned them. This Borough paſſing through ſeveral Families came in *Henry VIII.*'s time to *Thomas Packington*; in the fourteenth and eighteenth of Queen *Elizabeth*, Dame *Mary Packington*, Widow of Sir *John Packington* made return of Burgesſes in theſe Words, viz. ' Know ye that I *Mary Packington*, &c. have choſen, named and appointed my truſty and well-beloved *Thomas Lichfield* and *George Burden*, Eſqs; ' to be my Burgesſes for my ſaid Borough ' of *Aylesbury*, &c.' And in the twenty eighth of *Elizabeth*, the Burghers choſe *Thomas Taſburgb* and *Thomas Scot*, Eſqs; and *John Packington*, Eſq; Lord of the Manor, made the Return: Notwithſtanding theſe Returns by the *Packingtons*, *Aylesbury* was incorporated by Charter in the firſt of Queen *Mary*, and therein called an ancient Borough, and purſuant to ſuch Charter, the Sheriff of *Buckinghamshire* returned two Burgesſes for the Borough of *Aylesbury*

Brady of
Burghs
Append.
85.

Aylesbury to the Parliament of *Oxford* in the first of *Queen Mary*. How the *Packington* Family came to make Returns I don't find, and therefore I leave the Matter of Fact without Observation.

The Parliament Burgeses of *Stockbridge* Brady in *Hampshire* were chosen by the free Burgeses in the Court-Leet, and the Return made by the Lord's Steward. Burghs 28.

The Parliament Burgeses of *Agmonde-* Willis 117. *sham* were chosen by the Homage in the Lords Court-Baron, and the Return made by the Constables.

Now I proceed to an Account of Royal Boroughs, the *Dominicæ Civitates*, & *Burgi Regis*, the Castles, and fortified Towns of the King's Demeans, the Constables of the Castles, and the Stewards or King's Deputies in his Honors, Sokes or Manors, who had an original Jurisdiction within the Limits thereof, derived from the King, the particular Lord there.

Whilst the People paid uncertain Rents, Duties and Services, they were in Villanage, the King's Villains, the King employing Stewards, Bailiffs, or *Reves* to gather his Rents, Duties and Tolls; these *Publicanes* or Tax-gatherers, made heavy Exactions upon the King's Tenants that were in Villanage and Tenants at will.

Q²

When

Willis 2.
vol. 461.

When the Towns of the King's Demesns, consisting of Houses, Lands, Tenements, Tolls, Customs and other Duties, were at the Will of the King, his Tenants were in Villanage, and the Rents, &c. were gathered by the King's *Reves*, Tax-gatherers or Publicans, whose arbitrary Proceedings and Exactions rendered not only their Actions but their Persons odious to the People.

Madox
290.

The chief Inhabitants of a Royal Town or Borough, petition the King to grant to them his Rents, Tolls, and other Duties, under a certain Rent, which Petition the King complying with, ordered his *Reves* to make out a Particular of the Rents, &c. and then set a certain Sum to be paid by the select Body of Townsmen, granting them Authority to collect and gather the Royal Rents, Issues and Profits, out of which they were to pay the King a Fee-Farm Rent certain, and then Villanage ceased, and the Tenants became from such Contract free Burghers, and the Town a free Borough. The Burghers were all jointly bound for the true Payment of the Fee-Farm Rent, and chose one of their own Body to gather the particular Rents, and answer the Fee-Farm to the King, and this Officer was called *Portreve*, who in time grew up to be the chief Magistrate of the Borough, Port or Fort.

Firma
Burgi
Passim.

There

There were many free Boroughs in the time of the *Saxon* Kings register'd for such in Domesday, with the Number of Burghers and the certain Rent payable to the King, and this Contract for certain Rent was a sort of incorporating the King's Tenants, and these were the ancient Boroughs by Prescription, in which Privileges grew up by Usage.

Brady's
Burghs. 39.
82.

Afterwards ancient free Boroughs petitioned the Kings for Charters of Grant for Gilds, Fairs, Markets, Liberties, and Franchises; in consideration whereof the Borough offered the King an increased Rent over and above the ancient reserved Rent, which was twenty, thirty, or forty Pounds *de incremento*, as called in the Charters. When the King accepted the Offer, the King granted a Charter of Incorporation, with certain Liberties and Privileges, and certain *Locata*, or demised things that yielded Issues and Profits, *ad incrementum, meliorationem & emendationem Burgi*, to enable the Burghers to live comfortably and to pay their increased Rent with more Ease.

Madox,
290.

Willis vol.
2. 539
Append. 2.

In Charters of Incorporation the Privileges are particularly expressed, as in the Charter to *Bedford*, granted the thirteenth of *Henry II.* the Burgesses of *Bedford* upon paying forty Marks had the same

Madox,
273, 250.

Q 3

Liberties

Liberties with the Burgeſſes of *Oxford*. And *Henry III.* in the eleventh Year of his Reign granted the Borough of *Bedford* to the Burgeſſes there in Fee-Farm of forty Pounds *per Annum. Et habere Soc & Sac, & Thol & Them & Ingfantheſe & Gildam Mercatoriam, &c. & quod quieti ſint de Theolonio, Pontagio, Stallagio, Laſtagio, & de Paſſagio, &c.*

*Firma
Burgi 30.*

*Stowe's
Lond. 218.*

The ancient *Saxon* Kings frequently granted to Boroughs, Gilds religious, military and mercantile; when a Borough was gildated with *Gilda mercatoria*, the Head or Chief of the Gild or Brotherhood was generally ſtiled in the Charter Alderman, and was of the Nature of a Soke or Manor, and the Alderman as Lord thereof. The ancient Knighten-Gild in *London*, founded by King *Edgar's* Charter, was also called a Soke from the *Franchiſes* Liberties and Privileges granted in the Charter, and its Situation being at *Aldgate* it was called *Port-Soken*, and in time became one of the Wards of the City, and the Alderman of that Knighten-Gild, one of the Aldermen of the City, by the Title of Alderman of *Port-Soken* Ward. *Edgar's* Charter to this Knighten-Gild was confirmed by *Edward the Confefſor*, *William I.* and *William II.* by *Henry I.* and *Henry II.*

William

William I. let out Boroughs of his Demesns to the Burghers at certain Fee-Farm Rents, and Tradesmen paid Fee-Farm Rents for Mercantile Gilds.

The ancient free Borough was of the Nature of a Soke or Manor; the Lord of the Soke held Plea of Right and with the Suiters of his Court made By-Laws; and the Lord of the Borough with his free Burgers exercised judicial and legislative Power over the Inhabitants of the Borough, and made Laws for Government thereof, which were termed By-Laws or Borough-Laws.

*Brady
Burgbs
17, 21.*

The Lord that held *in Capite per Baroniam* served the King in his Wars, with as many Knights as he held Knights-Fees *in Capite*, and paid Escuage. The Royal free Boroughs in lieu of Services, paid certain Rent and Tallage.

*willis
Append. 3.*

The Tenure-Knight is render'd in *Latin miles*, and the dubbed Knight *eques* only; for *eques auratus* is not used in ancient *Latin* Authors. In *Edward III's* time the Barons that were Knights were stiled Chevaliers, they liking that Name rather than *Milites*, the legal Word for Tenure-Knight. All the Barons that were Knights were stiled Chevaliers: *John de Audely* not being a Knight, in the Summons to Parliament of the first of *Edward IV.* is stiled Armiger, and all the rest Chevaliers.

4 Inst. 52

*Parl. Summ
458.*

Q 4

When

The Antiquity of National

When Burgesſes were in *Henry III's*, time ſummoned to Parliament, the ancient Boroughs by Preſcription had equal Right with thoſe that were incorporated by Royal Charters to ſend their Representatives to Parliament.

It often occurs in Hiſtory and Records that Maritime Boroughs and Inland Boroughs, that have been great Sufferers by Shipwreck, Fire, or other Miſfortunes, have therefore obtained Favour in Parliament to have ſome Part of their Tallages, Tenths and Fifteenthſ abated in conſideration of their Loſſes, and ſuch Eaſe got for them by the Lords of whom the free Boroughs were holden; but how the Royal free Boroughs held *in Capite* of the King, were repreſented in Parliament, and obtained Favour there in Conſideration of Loſſes or Miſfortunes that attended them, they having no Baron, no Tenant *in Capite* there to repreſent them, they holding immediately of the King, I ſhall next endeavour to ſhow,

¶ *Inf.* 77. That Lands and Tenements holden in Bur-
gag (ſays Sir *Edward Coke*) is no Tenure *in*
Capite, but the Royal free Boroughs being
holden immediately of the King muſt be
holden *in Capite*, which not being holden
in Knight-Service, muſt be in free Bur-
gag, of which Mr. *Madox* gives many
Instances out of Records: He copies a Re-
cord

Firma
Burgi, 21.

cord of an Exemplification in the thirty seventh of *Edward III.* wherein it appears that *Michael de Northburgh* late Bishop of *London* held Rents, Lands and Tenements in *London, de Domino Rege in Capite in liberum Burgagium, sicut tota Civitas Londoniæ, &c.* and mentions other Records of Lands, Rents, and Tenements in *London*, held of the King *in Capite* in Freeburgage, and gives Instances of Lands, Rents, and Tenements held of the King *in Capite* in Freeburgage in *York, Winchelcombe* and other free Boroughs.

Now to the Point, how Royal free Boroughs obtained Abatement of their Tallages, Tenths and Fifteenths, set upon them in Parliament, they having no Superior there to represent them; therefore instead of having Motion made in Parliament for Abatement in consideration of Losses, Misfortunes, or Poverty; the Burghers of Royal Boroughs presented Petitions immediately to the King, to take their Misfortunes into his Royal Compassion and Consideration, and the King weighing the Merits of their Case, made Abatements of the Tallages set upon them in such Measure as their Losses or present Poverty appeared to merit, the Tallage being his, by parliamentary Grant, he remitted in such Measure as appeared to be equitable and charitable.

For

Willis vol.
2. 452.

Cot. Recor.
101, 111,
475.

For Instance, *Melcomb Regis* in *Dorsetshire* a Royal free Borough under the Fee-Farm Rent of eight Marks *per Ann.* in *Edward III's* time, being in *Richard II's* time much impoverished and desolated by Reason of the *French* burning it, prayed Discharge, which the King granted, by Charter, and *Henry IV.* in the first Year of his Reign confirmed King *Richard's* Charter, exempting them from the ancient Fee-Farm Rent, and also from all Tenths and Fifteenths for twelve Years ensuing; and in the eleventh Year of his Reign, granted a Discharge of the old Fee-Farm Rent for ten Years ensuing, upon paying twenty Shillings Fee-Farm Rent, and six Shillings and eightpence for *Desmes*: And *Henry V.* in the first Year of his Reign remitted all Arrears.

There are many other Instances of Royal Favour to Royal free Boroughs, wherein they appear to have as great Favours granted them as the Boroughs, that were represented in Parliament by the Lords of whom they held.

In the forty ninth of *Henry III.* the King's Writs were sent to all Sheriffs to return two Knights for the Shire, two Citizens for each City, and two Burgeses for each Borough, without Distinction of Royal free Borough, or Lords free Borough,
and

and from that time Burgesſes of Borough muſt derive their firſt Right of being Members of Parliament: Tho' *Henry III.* ſummoned no more Burgesſes to the ſucceeding Parliaments of his Reign; *Edward* his Son ſent Writs to the Sheriffs to return Knights, Citizens, and Burgesſes: In the eighteenth and twenty third of his Reign he ordered Manucaptors to be endorsed upon the Returns, four for Knights of the Shire, and two for Burgesſes. But notwithstanding the King's Care that all Burgesſes ſhould appear, the Sheriffs rarely made Returns for all the Boroughs of their Bailiwicks. The Writs did not particularly name the Boroughs that were to ſend Burgesſes, but were general, *viz. de qualibet Civitate duos Cives, & de quolibet Burgo duos Burgenſes, &c. eligi facias.*

*Brady
Burg. 52,
55.*

The Form of the Returns annexed to the ancient Writs, indicates ſomething of a diſcretionary Power in the Sheriff, who after the Names of the Knights, Citizens, and Burgesſes, with their ſeveral Manucaptors, concludes thus, *viz. non ſunt plures civitates vel Burgi in Balliva mea,* tho' there were more Boroughs there, and ſometimes the Return concluded in theſe Words, *viz. Et non ſunt aliæ civitates ſeu Burgi infra comitatum, de quibus aliqui cives, ſeu Burgenſes ad dictum Paliamentum*

*Brady
Burg. 57.*

*Willis vol.
2. 242.*

*Cot. Recor.
536.*

*Parl.
Elſing 73.*

Parliamentum venire debent seu solent, propter eorum debilitatem seu paupertatem. Anciently Burgeses were chosen out of the Resients in the Borough, and not Country Gentlemen and Ministers of State as of late Days. In the first of *Henry V.* it was at the Petition of the Commons enacted that Burgeses return'd to Parliament should be Resient in and free of the Boroughs, for which they were returned.

Hen. v. 1.

*Brady's
Burg.
54, 59.*

The Sheriffs frequently left out of their Returns, small inconsiderable Boroughs that were poor and not in Condition to pay their Burgeses their Wages, or such as had not Resients qualified for Service in Parliament, and such Omission was according to the Favour Boroughs could obtain from the Sheriffs.

The great Number of Boroughs in *Cornwal* and the adjacent western Counties is owing to the Favour of the old Earls of *Cornwal* and *Devonshire*, Men of great Power and Demeans, the Earls of *Cornwal* being all of them related to the Kings of *England*: And *De Rivers*, *De Fortibus*, and *Courtney*, Earls of *Devon*, great and powerful Men, who made many of their Towns, Boroughs; many of them being poor, by the Interest their Lords had with the Sheriffs, got to be excused from sending Burgeses to Parliament, so that many
of

of them were quite dropt, till revived again by *Edward VI.* and *Queen Elizabeth* as ancient Boroughs that had been neglected and overlooked.

Willis, vol. 2. 243.

Some Boroughs obtained Exemptions from Service in Parliament by Royal Charters, as *Toryton* in *Devonshire* did from *Edward III.* in the forty second Year of his Reign, tho' that Borough had made about thirty Returns of Burgeffes to Parliament in his and the two preceding *Edwards* Reigns.

Of the great Number of ancient free Boroughs in the County of *Cornwal*, only *Lanceston* alias *Dunbeved*, *Leskard*, *Loftwetbiel*, *Truro*, *Bodmin*, and *Helston*, sent Burgeffes to Parliament till *Edward VI's* Time: The rest of the *Cornish* Boroughs being privileged by Charters, since the last Year of *Henry VIII.* and most of them in their Charters of incorporation, stiled ancient Boroughs.

Willis Pref. 9.

The Sheriffs that neglected returning Burgeffes for poor Boroughs or such as had no Resients qualified for Service in Parliament were not therefore blamed by King, Lords or Commons; but when the Favour was by Influence of great Lords to serve some private Turn, they were accused in Parliament, or Petitions were presented to the King.

The

The Abbot of St. *Albans* on some sinister View, prevailed on the Sheriff to make no Return of Burgeses for the Borough of St. *Albans* to the Parliament of the eighth of *Edward* II. which Borough being in a Condition to send Burgeses and pay their Wages, was not willing to be neglected at the Instance of the Abbot; wherefore the Burghers petitioned, setting forth that they were Inhabitants of an ancient free Borough and had sent Burgeses to the Parliaments of the King's Progenitors. The King's Council answerd, let the Rolls in *Chancery* be searched, &c. if in the time of the King's Progenitors, the Burgeses aforesaid used to come or not, and then let them have Justice in this Matter, and such as have been called may be called, if there be Necessity.

*Brady's
Tracts* 37.

Willis, vo. 2
495, 554. *Corffe* Castle in the Island of *Purbeck* in *Dorsetshire*, made a free Borough by King *Edgar*, never sent Burgeses to Parliament till Queen *Elizabeth's* time, when many of the Boroughs in the *West* of *England*, obtained Royal Favour, to be recognized as ancient Boroughs; amongst the rest the Queen granted a Charter to *Corffe* Castle therein reciting, That the said Borough was an ancient free Borough, and had enjoyed certain and divers

vers Rights, Liberties, Privileges, Freedoms and Exemptions, as well by Prescription as by and on Account of Charters and Confirmations by her Progenitors Kings of *England*; all which the Queen confirmed in her Charter; and the Queen's Charter was confirmed by *Inspeximus* in the thirty first Year of *Charles II.*

In the eighteenth of King *James I.* the Boroughs of *Ilchester* in *Somersetshire*, and *Pontfract* in *Yorkshire*, petitioned the House of Commons to be restored to the ancient Rights and Privileges they enjoy'd in the time of his Royal Progenitors. The *Ilchester* Petition set forth that the Town is an ancient Borough and sent Burgeses to Parliament in *Henry III's* time and till the third of *Henry V.* since which time, they being grown poor and not able to pay their Burgeses their Parliament Wages, were therefore excused by the Sheriffs of *Somersetshire*; and whereas they were grown able to pay Wages to their Burgeses, they desire to be restored to their ancient Privilege of sending Burgeses to Parliament: And farther they set forth in their Petition that in the time of *Philip* and *Mary* they obtained a Royal Charter in Confirmation of their ancient Rights and Privileges, whereof upon searching Records they find sending Burgeses to Parliament was one of them; which

Parl.
Jour. MS.
155, 163.

which they did not know till they lately found it upon Record. Therefore, &c.

By Order of the House both the Petition of *Ilchester* and *Pontfract*, were referred to the Committee of Privileges and Returns, to consider of the Records concerning the Privileges of the said Towns mentioned in their Petitions.

The next Day Sir *George More* reported from the Committee of Privileges and Returns, that the Town of *Pontfract* in *Yorkshire* did send Burgesses to the Parliament of the twenty eighth of *Edward III.* and in the tenth and eleventh of *Henry VI.* that County having received the King's Writ for Election of Burgesses, did return that by Reason of their Poverty, caused by the Barons Wars they were not able to send any Burgesses to the Parliament, and only then sent Knights for their Shire. Since in the fourth of *James*, the King confirmed their Charter and ancient Privileges, That this Town now only desireth, that it may enjoy the same accordingly, and the King's Majesty's Grant.

And Sir *George More's* Report relating to *Ilchester* was, that it appeareth that *Ilchester* in the County of *Somerset*, did return and send Burgesses in the twenty eighth of *Edward I.* and first of *Henry V.* That that Town hath all his ancient Privi-

Privileges confirmed to it, by a Charter by the King that now is.

It is the Vote of the House that the Towns, *Pontfract* and *Ilchester*, should and ought to send Burgesses to the Parliament, according to their ancient Privileges, confirmed to them by Charters from his Majesty. And it is accordingly ordered that the Speaker shall send a Letter to have Writs go down to these Towns for the Elections of Burgesses there.

Many ancient Boroughs that by Disuse had lost the Privilege of returning Burgesses to Parliament have obtain'd Re-grants of their ancient Privileges by Royal Charters since *Henry VIII's* time, of which you may see a great many Instances in the Preface to *Brown Willis's Notitia Parliamentaria*.

The Royal Charters of Confirmation, of Privileges, of ancient Boroughs, generally express, 'Whereas the Town was an ancient Borough, and had certain Rights and Privileges;' and then proceed in confirming particular ancient Rights and Privileges: Many ancient Boroughs made no Returns of Burgesses to Parliament. Of the great Number of Boroughs that now send Burgesses to Parliament all are revived or new made that are over and above the Number of 126, there being no

R

more

*Willis
Prefi 22.*

more parliamentary Boroughs in the Year 1546, the last of *Henry VIII*.

It is difficult to discover the original Right of Boroughs to send Burgesses to Parliament, many ancient free Boroughs that sent Burgesses to Parliament in *Edward I*'s time upon the Writ to the Sheriff to return Burgesses for each Borough in his Bailiwick, after two or three times appearing, finding an Expence beyond their Inclination to bear, neglected appearing, so long as to lose their Right; and these I take to be Prescription-Boroughs, whose Privileges were kept in Memory by Usage only, which by Difuse might lose their Claim to the Privilege difused; for if such Privileges were *in Scriptis*, in Charters, and upon Record, it could not grow obsolete and lost by Difuse; such Charter Boroughs as had a Desire to be discharged from Service in Parliament were forced to petition the King for Charters of Exemption, as *Torington* was released by a Royal Discharge as before-mentioned.

4 *Inst.* 49.

Some Boroughs, that through Neglect of sending Burgesses to Parliament had lost that ancient Privilege, recovered it again by obtaining Royal Charters, some by Vote of the House of Commons; some Boroughs were made *de novo* by Royal Charter,

ter, and some by Act of Parliament; but the original of the old *Saxon* Boroughs and of those of the old *Norman* Kings and Barons, is very obscure: Some and those very few, the ancient Historians have transmitted an Account of to Posterity.

Barnstaple in *Devonshire* shews Antiquity in its Name; for, says *Risdon*, *Bar* in the *British* Language signifies the Mouth of a River, and *Staple* in the *Saxon* a Mart Town, for selling Merchandises: And *Leland* says it obtained its Liberties from King *Æthelstan*, and in *Domesday* is register'd to be the King's Demean Borough, having forty Burgesses within the Borough and nine without, and paid to King *Edward the Confessor* forty Shillings by Weight. The Castle and Borough was granted by *William I.* to *Johel de Totneis*, or *Totnefs*; and when Burgesses were summoned to Parliament sent Burgesses from the twenty third of *Edward I.* This Borough was incorporated by *Henry I.* by Royal Charter, and the Privileges enlarged by King *John* and Queen *Mary*, and confirmed by *James I.*

Risdon's
vol. 1. 105.

Leland
Itin. vol. 2.
54.

Brady's
Burgh. 5.
Willis vol.
2. pag.
308.

Tho' *Barnstaple* as an ancient Borough, sent Burgesses to Parliament from *Edward I.* to the present time, yet some ancient free Boroughs sent no Burgesses to Parliament, as in Page 137.

Bere in *Devonshire* being granted to one of the Royal Family of *Alençon* in *France* by *William I*, had the Name of *Berealston*, and passing through the Families of *Ferrers*, *Champernone*, *Willoughby*, *Blount*, it came at last to * *Sir John Hobart* of *Blickling* in the County of *Norfolk* Bart. and was made a Borough by its ancient Lords, yet never sent Burgeses to Parliament till the twenty seventh of *Elizabeth*, when many ancient mean Boroughs were summon'd to return Burgeses. The returning Officer is the Port *Reve*, who is annually chosen in the Lords Court by the Freeholders, which is an Indication of its being an ancient Borough.

* Lord
Hobart Baron of
Blickling.

Willis,
vol. 2.
114.

Tregoney in *Cornwal*, an ancient Borough, made two Returns of Burgeses to Parliament in *Edward I*'s time, viz. in his twenty third and thirty fifth Years, and never sent any more Burgeses to Parliament till the first of *Queen Elizabeth*.

Willis
vol. 2.
212.
Pref.
XVII.

Cockermouth in *Northumberland*, an ancient Borough, sent Burgeses to Parliament in the twenty third of *Edward I*, and no more till 1640, when the House of Commons, upon View of Records, found it had formerly sent Burgeses to Parliament, therefore order'd a Warrant to be issued under the *Speaker's* Hand, directed to the Clerk of the Crown in *Chancery*, to send out a Writ for Election of Burgeses to serve in Parliament for the Borough of *Cockermouth*. *Hony-*

yn's
m.
Pt.
182.

Honyton, made a Borough by *Isabel* Wife to *William de Fortibus*, and Daughter and Heir of *Baldwin de Rivers* Earl of *Devonshire*, sent Burgeſſes to Parliament in the twenty eighth of *Edward I*, and in the fourth of *Edward II*. and no more till the Borough was reſtored to its ancient Privilege in the ſixteenth of *Charles I*.

Willis, vol. 2. 341.

Brady's Burgh. 42.

A Multitude of ſuch Inſtances may be given out of Records, Parliament Journals, and History, of ancient Boroughs loſing the Privilege of ſending Burgeſſes to Parliament, and after a long time loſt, recovering again, either by Royal Summons, Charter, Vote of the Houſe of Commons, or Act of Parliament.

Cheſter hath anciently had Parliaments held by the Count Palatines of *Cheſter*, till the Palatinate fell into the Crown by the Death of *Simon Monfort* Earl of *Leiceſter* and *Cheſter*, at the Battle of *Eveſham* in *Henry III's* time, from which time the Palatinate eſcheated to the King, and neither County nor City ſent Members to the Parliament of *England* till the firſt Year of *Edward VI*, that Privilege being granted by Act of Parliament in *Henry VIII's* time.

34 & 35
H. VIII.
13.

In the firſt Year of King *James I* a Charter was granted to the University of *Cambridge* to ſend Members of Parliament.

Willis, 152.
Pref. XIV.
XIX.

Harwich sent Burgeſſes to Parliament in the ſeventeenth of *Edward III*, but ſent no more till reſtored to that Privilege by Charter in the ſecond of King *James I*.

C H A P. VI.

The Speaker of the Commons in Parliament.

THE *Saxons* Parliaments conſiſted of *Wita's* or Nobles only, and the *Norman* Parliaments only of Barons and Tenants *in Capite*, who repreſented their Tenants and took care of their Interests in Parliament.

William the Conqueror's Laws were made *Concilio Baronum*, as *Henry I*. ſays in his ſecond Law. *Hoveden* and the Author of the *Lichfield Chronicle* ſay, the twelve Commiſſioners King *William* ſummoned out of each County to make report of what were the ancient Laws of the Kingdom, were ſent for *conſilio Baronum*, and the Report they made was *in conſilio Baronum*. There is no mention of Commons in King *William's* Parliaments either in *Abby Leidgers* or *Registers*, ancient

Tit. Hon.
701.

MS. Parl.
cap. 4.

ent History or Annals; though some modern Writers have wrested some Expressions of ancient Historians, without taking notice of the whole Scope of the Authors, and endeavour to prove Commons in the early *Norman* Parliaments, by stealing Patches from one and another of the Ancients, and stitching them together in such fashion, as to make some appearance of such a Cloak as they have a mind to put upon us; As *Polydore Virgil* and his Followers, in this Case, have shamefully perverted the Sense of *Paris*, *Hoveden*, *Eadmer*, and *Florence of Worcester*.

William Rufus held a great Council or Parliament at *Rockingham*, where, says *Eadmer*, a certain Knight came forth and stood before the People and spoke in the Name and in Behalf of them all, whereby the Mind and Consent of the People was understood. This great Knight must not be taken for a Knight elected by the People, as Knights of the Shire were afterward; not one Word in *Eadmer's* History giving any shadow of such a Knight so chosen; no, this Knight must be a Tenant *in Capite* summon'd to Parliament by the King's Writ as all Tenants *in Capite* were.

The *Saxon* Kings, and *William I.* and his two Sons presided in Person in their Courts *de more*, and summon'd Parliaments, there-

Eadmer,
34, 39,
40, 41.

Cot. Post-
hum. 45.
48.

fore in their Times we search in vain for a settled Speaker. History is full of the personal Debates and Disputes between *Henry II*, and Archbishop *Becket* in the Parliaments of *London*, *Clarendon* and *Northampton*.

The next pretended *Speaker* of the Commons that the Advocates for the Commons in Parliament produce, is *Peter de Montfort*, which they take out of the Register of *St. Albans*, where it is said, that he, *vice totius Communitatis*, consented to the Banishment of *Adomer de Valence* Bishop of *Winchester*; but this won't serve their turn neither, for this *Peter de Montfort* was a great Tenant *in Capite* descended from *Hugh de Montfort* a *Norman*, who held *in Capite* of *William* the Conqueror twenty eight Manors in *Kent*, besides a large Share in *Rumney-Marsh*, sixteen Manors in *Essex*, fifty one in *Suffolk*, and nineteen in *Norfolk*. And his Descendant *Peter* in *Henry III's* time held the Castles of *Beldfert*, *Horestan*, *Bruges* and *Ellesmere*; and in the forty second of *Henry III*, was chosen by the rebellious Barons to be one of those select great Men that were to reside at Court to exercise Regal Power, to dispose of the Custody of the King's Castles, to nominate Chancellor, Justices, Treasurer and other Officers and Ministers of State: From all
which

42. H. III.
A. D.
1258.

Dugd. Ba-
ron. 407.

Brady,
625, 626.
628, 645.
651, 652.

which it may be fairly concluded, that this *Peter de Montfort* was not a Commoner nor *Speaker* of the Commons. This *Peter de Montfort* was also chosen by the Committee of four Lords, one of the King's Council, which were all at that time *Barons* and great Tenants *in Capite*. He is in the Number of the *Barons* killed at the Battle of *Evesham*.

In the forty ninth of *Henry III*, Knights, Citizens and Burgesſes were ſummon'd to ^{4 Inſ. 2.} Parliament, and Lords and Commons ſat together in the ſame Room, and then the *Speaker* of the Parliament was the Lords *Speaker*.

After the Battle of *Eveſham*, *Henry III* being deliver'd from the Tyranny of the *Barons*, ſummoned no more the Commons during his Reign.

In the eighteenth and twenty third of *Edward I*, Lords and Commons met together in the ſame Room to hear the Cauſes of calling the Parliament, and when that was declared, Lords and Commons ſeparated to conſider and debate apart of the Matters given in charge; and then in all likelihood, the Commons had a Chairman or *Speaker*, to regulate their Debates, and to report their Reſolves and Determinations to the King and Lords; but as there is no *Speaker's* Name upon Record before *Edward*

Dugd. Baron. 394.

Parl. History 288.

Daniel,
fol. 257.

Cotton,
post. 20.

4 *Inst.* p. 2.

ward III's time, it is probable there was no standing *Speaker* to continue during the whole Session of Parliament, but sometimes one of the Commons order'd into the Chair, and sometimes another: Some Resolves were ordered to be made by one, and some others to be reported by another: As *William Trussel* in the nineteenth of *Edward II* was in the Chair when *Hugh de Spencer* the younger was accus'd of Treason in Parliament. And in the sixth of *Edward III*, the Commons made answer by Sir *Jeffery le Scoop*; and in the fifteenth by Sir *William Trussel*, and in the forty ninth by Sir *Peter de la Mare*; but these are not *Speakers* upon Record. The first *Speaker* that is upon Record is Sir *Thomas Hungerford* in the fiftieth of *Edward III*, when the Cause of Summons being ended, the Commons were order'd to withdraw to their ancient Place in the Chapter-house of the Abbot of *Westminster*. In the fifth of *Richard II*, Sir *Richard Walgrave* was chosen by the Commons to be their *Speaker*, who made excuse and desired to be discharged; and he is the first *Speaker* that appears upon Record to have made Excuse, but the King commanded him upon his Allegiance to accept the Place, seeing he was chosen by the Commons.

In the fifth of *Henry IV*, Sir *Arnold Savage* being chosen *Speaker*, after making excuse,

cuse, desir'd the King in the Name of the Commons, that they might freely make complaint of any thing amiss in the Government, and that the King by the sinister Information of any Person, would not take offensively that which they should complain of in that behalf, which Petition was yielded to by the King.

Sir *John Tiptoft* being chosen *Speaker* in the seventh of *Henry IV*, made excuse by reason of his Youth, which not being accepted, he desir'd that if any Writing was deliver'd by the Commons, and they should desire to have it again to amend or alter any thing therein, it might be restored to them, which was granted. Whilst he was *Speaker*, in the Name of the Commons he signed and sealed the Deed of entailing the Crown in the seventh of *Henry IV*. This young *Speaker Tiptoft* took more upon him, spoke more boldly and freely to King and Lords than any before him, whose Example being followed, the King and Lords put a check to it as a Novelty in the thirteenth of *Henry IV*, when *Thomas Chaucer*, as *Speaker*, desired Freedom as usual.

*Cotton's
Records,
462. 478.*

In the twentieth of *Henry VI*, the Commons presented to the King Sir *John Popham* to be their *Speaker*, whose Excuse was receiv'd, and he thereof discharged; then the Commons presented *William Tresham* for *Speaker* who was allowed. In

Parl. Fl-
sing. 296.
Parl. Jour-
nal, MS.
77.
MS. Willi-
ams, 57.
Cot. Re-
cords, 651.

In the thirty first Year of *Henry VI*, *Thomas Thorpe*, Esq; *Speaker* of the House of Commons was arrested in Execution at the Suit of the Duke of *York*, between two Sessions of Parliament, wherein the Opinion of the Judges being demanded by the Lords, they refused to judge of the Liberties of Parliament as not belonging to them, whereupon the Lords without their Advice adjudged that he was not to have Privilege; which being signified to the Commons, and also the King's Pleasure, that they should choose another *Speaker*, they forthwith chose *Sir Thomas Charlton*.

Sir Thomas More, Chancellor of the Duchy of *Lancaster*, was *Speaker* of the House of Commons in the fifteenth of *Henry VIII*, he made the usual Protestation for himself, and prayed that if any of the Commons should in Debate of Matters speak more largely than they ought, that they might be pardoned by the King, which the King granted.

Thomas Moyle, Esq; *Speaker* of the House of Commons in the thirty fourth of *Henry VIII*, petitioned for Freedom of Speech of the Commons in their House, which was granted.

Sir Thomas Gargrave, *Speaker* of the House of Commons in the first of *Queen Elizabeth*, made in his Speech to the *Queen*

four

four Requests; first, for free Access to the Queen; secondly, for Liberty of Speech; thirdly, for Privilege from Arrests; fourthly, that his mistaking might not prejudice the House.

Sir *Thomas Richardson*, *Speaker* of the House of Commons in the Parliament of the eighteenth of King *James I*, made a disabling Speech to the King as usual, desiring another *Speaker* might be chosen; but the King approving the Choice, the *Speaker* replied again, that he was much bound to his Majesty and the House, but he should have taken it as a greater Favour to have been spared, and fell into a large Speech, shewing how much *England* was blessed by God for sending so worthy and religious a King to rule over us, and concluded with a Petition for the usual Favour and Privilege for himself and the Commons. I mention no other of the *Speakers* but such as petitioned for some particular Favour or Privilege.

I conclude this Chapter with a short Recapitulation; The Kings of the Heptarchy presided in Person in their *Witenagemotes*, and so did *Alfred* and his Successors the Monarchs of *England* in their Courts *de more*, and in their *Witenagemotes* that were summoned upon extraordinary Occasions at different Times from the Courts *ex more*, at
the

The Antiquity of National, &c.

the three great Festivals. And the Kings of the *Norman Race* presided in their Courts *de more* and Parliaments, till the Knights, Citizens and Burgeſſes were ſummoned to Parliament, and till the Lords and Commons ſat in two diſtinct Houſes, when the Commons had a Chairman, ſometimes one, and ſometimes another, to report to the King in the Lords Houſe, the Reſult of their Debates; and there was no ſettled *Speaker* during a whole Seſſion of Parliament, till the fiftieth Year of *Edward III.*, as aforemention'd.

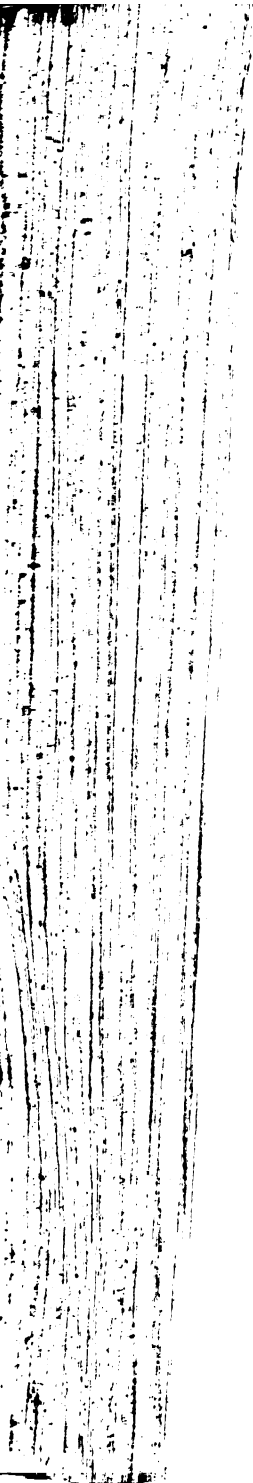
The End of the Firſt Volume.

1813 12 10 20



GENERAL BOOKBINDING CO.
 75 378AA 2 013 1 A
 QUALITY CONTROL MARK

6004
 Digitized by Google



THE
HISTORY

Of the HIGH COURT of
PARLIAMENT,
Its ANTIQUITY, PREHEMINENCE
and AUTHORITY;

And the HISTORY of
Court Baron and Court Leet,

A Chronological HISTORY of them from the
earliest Times drawn down to the present.

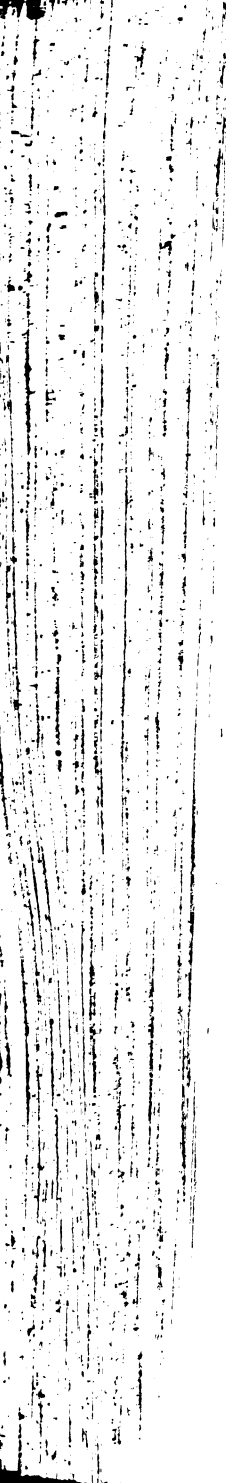
Together with

The Rights of Lords of Manors in Common
Pastures, and the Growth of the Privileges the
Tenants now enjoy there.

VOLUME *the* SECOND.

L O N D O N :

Printed for R. KNAPLOCK at the *Bishop's Head*
in *St. Paul's Church-yard*, and J. TONSON at
Shakespeare's Head in the *Strand*. MDCCLXXXI.





THE
ANTIQUITY
OF
NATIONAL COUNCILS
OR
PARLIAMENTS.

CHAP. VII.

Royal Stile in Acts of Legislature; Prerogative Royal, in Parliamentary Affairs; and Parliamentary Privilege of Lords and Commons.

ROYAL Prerogative and the Privilege of Members of Parliament are so interwoven, that I think proper to take both into one Chapter, but however begin with Royal
A 2 Pre-

Prerogative, separately from Privilege of Nobles and Commons, till Chronology and parliamentary Proceedings force me to intermix one with the other.

The *Saxon* Conquerors here, were a confederated People, under Contract to share and divide their Acquisitions amongst them in an agreed Proportion; the General or chief Commander a Share, and all other Commanders a Share of the *Britons* Lands, and with the Land went Power: The chief Commander assumed the Name and Title of King; and the inferior Commander, the Title of *Gerefa*, *Ealder*, *Wita*, or *Thegen*. The civil Government was of the Nature of a great Seignory; the King, chief Lord, and the *Wita's*, the Suitors of Court, the King's Assessors, without whose Advice and Consent no new Laws were made, nor any Alteration of Property; the *Saxon* Government here being founded in Property, the Commanders of the Troops in War were Governors of the People in Peace, being Sharers of the *Britons* Lands with the King, were his Collegues in Peace in the civil Administration; all great Affairs were agreed in common Council, by the King and his Collegues, which Meeting was called *Witenagemote*, a Council of the *Wita's* or Nobles, or Governors of the People.

The *Saxon* Kings did not conquer here by stipendiary Soldiers, but with the Assistance of Fœderal Undertakers, who by Contract were to reap a proportionate Share of the Gains by Conquest, wherefore the Kings were not despotick, they not conquering the *Britons* of themselves at their own Expence, but at the Expence and Hazard of their Companions.

Seven *Saxon* Kingdoms grew up here one after another, and all founded in Property; all pursued the same Measures and Methods of Government: The King's Companions obliged him to swear to govern by and with their Advice, according to their ancient Customs, and to introduce no new Laws without their Consent, to do equal Right without having Regard to the Person of any one, and that he should be obedient to the Law, and submit to Right as well as they and their Men; and in consideration of the King's Engagement to them, they solemnly plighted their Troth to the King, to stand by him and assist him against all Enemies and Invaders; and this reciprocal, fœderal Union between King and Nobles, is the original *Saxon* Contract, the very Prototype of modern Coronation Oath.

Mirror, 3.

The *Saxon* Kings were generally so just in their Administration, made the Laws

Tyrrel, 226.

A 3

the

the Rule of their Wills, and not their Wills their Law, that they lived in Ease and Peace with their own People, tho' in War with their Neighbours; deposing a King in the *Saxon* times, being so rare, I shall give a short Account of the first.

Chron.
Sax. 56.

Sigebert King of the *West Saxons*, wresting the Laws to answer his own Will, and depending upon his Wealth and Power, grew intolerably tyrannical to his Subjects, so that they desired his Favourite *Cumbran*, one of the noblest Earls of *West Saxony*, to represent their Grievances to the King, which he did in a dutiful Manner, and depending upon his Interest and Favour with the King, added his own Advice, and persuaded him to govern more mildly and make the Laws his Rule, and thereby make himself easy and more beloved by God and Man, for which good Advice the King ordered him to be immediately slain; and continuing in his tyrannous way, provoked the Nobility to meet in a general Assembly, where upon Deliberation and unanimous Consent he was expelled the Kingdom, and *Cinewulf* of Royal Blood elected King of the *West Saxons*,

A. D. 755.

When the Heptarchy was reduced into one Monarchy, the Measures of Government continued in the old Method, the Monarch's

Monarch's Dominion enlarged, but his Power in Administration the same. He swore at his Coronation to govern according to Law, to protect and preserve to the People their just Rights and Privileges, and they swore Allegiance to him: And a general good Harmony there was between the *Saxon* Kings and their People; the King's Administration was bounded by Moderation and Justice, and the People's Obedience free and voluntary.

The *Saxon* Kings did not assume high and swelling Titles; *Alfred*, who conquered the *Danes* and reduced the Nation into one Monarchy, was therefore by Historians stiled *Alfred* the Great, and from his moderate and wise Administration, *Alfred* the Just, and from his religious Observance of the Laws of God and holy Church, *Alfred* the Good; but in the Laws made in his time, he was stiled only *Alfredus Rex*.

Alfred with the Advice and Consent of his *Wita's*, revised the Laws made in the time of the Heptarchy, and by their Advice and Assent rejected such as were judged obsolete and useless, enforced such as were esteemed wholesom, and made such new Laws as he and his *Witenagemote* judged necessary and convenient for the Commonwealth.

Alfred's
Life, 107.

A 4

Edward

Mare
Claus. 273.

Edward the Elder, is in his Laws stiled only *Edwardus Rex*, *Æthelstan* and *Edmund* the same; and *Edgar* in his Laws has the same Stile; but in his Charters his Stile swells much, and rises very high. In his Charter to *Alure*, he stiles himself King of the *English* People, and of all the Nations and Islands of the *British* Seas supreme Lord and Governor; and in an *Inspeximus* in the Patent Rolls of *Edward IV.* ‘ I *Edgar*, Sovereign Lord of all *Albion*, and of the maritime or insular Kings inhabiting round about.’ And in his Charter to the Church of *Worcester* he stiles himself, ‘ I *Edgar*, King of *England*, and of all the Kings of the Islands, and of the Ocean lying round about *Britain*, and of all the Nations that are included within the Circuit thereof, supreme Lord and Governor.’

But notwithstanding all these high swelling Titles he governed the People with Moderation and Justice, and made a great many beneficial Laws and Canons with the Advice and Consent of his Spiritual and Secular *Wita's*.

Rel. Spel.
19.

Ethelred in his Charter to *Æthelwold*, stiles himself *Totius Albionis Basileus*; and in his Charter to the Church of *Canterbury* *Induperator* i. e. *Imperator*; yet the Laws made in his Parliament at *Wodestock*,

Stock, were by and with the Consent of his Wita's.

What the Saxon Wita's or Thegnes were, is already accounted for, and those and no others were Members of the Saxon Witenagemotes or Courts *de more*.

The Saxon Kings in their Charters and other Acts and Deeds wherein they were the sole Makers, Granters and Disposers, stiled themselves in the singular Number, as in the Charters afore-mentioned, *Ego Edgarus, Ego Ethelredus*. And their Laws tho' in the Text expressed to be made by the Advice and Consent of the Wita's, yet the enforcing Part is in the sole Name of the King, as *Ego præcipio, mando, volo, &c.* but *Edgar* in his Ecclesiastical Laws takes in the Archbishop to be with him a Party to the Command, *viz. Jubeo ego & Archiepiscopus*, and his Canons begin with *Docemus, &c.* In *Edward* the Elder's Laws the enforcing Part is an imperial Stile, *viz. Edwardus Rex Jubet, &c.* yet in his fourth Law it appears, that the Laws he enforced were made with the Advice and Consent of his Witenagemote at *Exeter*.

Wilkins,
79.

Archæon,
39.

In *Egbert's* time there was a remarkable Instance of the Power and Privilege of Parliament: *Baldred* King of *Kent* his Contemporary, granted the Manor of *Malinges* to *Christ's* Church of *Canterbury*, the Copy of which Grant is in a Leiger-Book of *Can-*

Spel. Con.
Tom. 1.
pag. 340.

Tyrrel,
257.

Canterbury, wherein it is called *Malinges* in *Suffex*, the Nobles of *Kent* refused to confirm the King's Grant, and therefore it was avoided, and the Church lost the Land, till *Egbert* in his Parliament at *Kingston* upon *Thames*, with Consent of the Nobles, made a new Grant to *Ceolnoth* the Archbishop, which being confirmed by the Bishops and Nobles, stood good to the Church. This *Witenagemote* was held *A. D.* 836.

The King's Nomination of Bishops in the *Saxon* Reigns was generally confirmed in the Court *de more* or in *Witenagemote*, *A. D.* 905. King *Edward* the Elder nominated five Bishops in *Witenagemote*, and they were confirmed by the Nobles assembled.

Chron.
Sax. 117.

Anno. Dom. 957, in the Parliament holden at *Bradford* in *Wiltshire*, *Dunstan* was nominated by the King to the See of *Worcester* and confirmed by Consent of Parliament; and in 958 after the same Manner, confirmed in the See of *London*, and in 959 in the See of *Canterbury* with the like Approbation and Consent.

MS. Life
of St.
Dunstan.

Tyrrel,
cxiv.

Chron.
Sax. 179.

Paris, 20.

In *Edward the Confessor's* time *Wulstan* was called before a great Council, and there chosen Bishop of *Worcester*, which *Matthew Paris* sets forth in these Words, *viz. Plebis petitio, voluntas Episcoporum, gratia Procerum, Regis auctoritas*, concurred in making him Bishop. The Abbots of the greater

Monasteries were generally chosen in the *Saxon Witenagemotes*, or at least their Nomination was there confirmed.

In this Chapter of Privilege of Parliament, occur often the several Names of that great Assembly, sometimes 'tis called *Witenagemote*, sometimes *Court de more*, and sometimes great Council. The great Council is before-mentioned in Page 51, so I proceed to the *Court de more*, and the *Witenagemote*.

At the three great Festivals, *Easter*, *Whitsuntide* and *Christmas*, King *Alfred* Mirror, 5. sat with his Nobles in his *Court de more*, which was so called from the Spiritual and Temporal Nobles assembling at those Tit. Hon. 632. great Festivals *ex more* without any Summons. In this Court the King heard the Parl. Jour. MS. 196. Appeals of such as were injured by the Determinations of the Judges of other Courts, false Judgments reversed, and corrupt Judges punished: In this Court the King heard the Appeals of the People that were injured by great Men, who were too powerful to be called to Account in any inferior Courts. In this Court in *Ethelred's* time, *Ethelwold* Bishop of *Winchester* recovered three Manors that *Lefsi* had disfeised him of. In this Court *Edward the Confessor* Tit. Hon. 633, 634. impeached Earl *Goodwin* for the Death of *Alfred* the King's Brother.

Edgar

Somner
Canter-
bury, 350.

ll. Edgar,
3.

Edgar also heard Appeals of the People in his high Court *de more*, if it appeared the Aldermen had given false Judgments in the Courts of the Counties, their Judgments were there reversed and the Aldermen punished according to the Degrees of their Offences, by Fines which the Bishops of the Diocese were to return into the King's Treasury, and the Aldermen were to lose their Places for their Ignorance.

Archaion,
39, 53, 57,
57.

The Court *de more* was also a Court of Legislature: King Edward Senior's Laws were made in this his Court held at Exeter. Æthelstan's Laws were made in his Court *de more* held in the Christmas Festival at Exeter; Edmund's at Easter Festival in his Court *de more* at London; and Canute's at Christmas Festival in his Court *de more* held at Winchester. At these grand Solemnities the State of the Nation was weighed and considered, provision of Men and Money made for the Support of Church and State.

The Courts *de more* were certain as to time, but not as to Place, till William the Conqueror appointed the certain Places where he would always reside and keep his Court at the three great Festivals.

At these times when the King was most easy of Access, the People took Opportunity to present their Petitions, and the suffering

suffering *English* presented their Petitions in *French* to make them the more agreeable to the King; and when the King granted his Favours to the *English* he did it in a most free and agreeable Manner. When the Citizens of *London* petitioned for a Confirmation of their ancient Liberties, they presented their Petition in *French*, he graciously received their Petition, and complied with it in a most agreeable Manner, ordering them a Charter of Confirmation of their Liberties, and to be writ in the *English* Language and Character.

In the *Easter* Court 1072, the Case between the two Archbishops *Lanfrank* and *Thomas* was debated in the King's Presence, and there the Debate was adjourned to *Windsor*, where it was determined in the King's Presence. And in the *Easter* Court 1082, the Case between *Arfast* Bishop of *Norway*, and *Baldwin* Abbot of *Bury* was in like Manner heard and determined; in the Words of the Register of *Bury*, *Ventilata in publica, jubet Rex teneri judicium causis auditis amborum.* Henry I. determined so many Cases in his Court *de more*, and with such Judgment and impartial Justice, that Historians give him the Surname of *Leo Justitiæ*.

Thus stood the Courts *de more* in Custom Grace to *Easter*, *Whitjuntide* and *Christmas* on the King's Part, and *rationæ tenuræ* on the

Cot. Postb.

47.

the Part of the Bishops, Barons and Tenants *in Capite*, till the Wars between *Maud* the Empress and King *Stephen* gave an Interruption to such regular Assemblies, which in the Reigns of *Henry II.* and *Richard I.* were in some Measure revived, till the unsafe time of King *John*, when over potent and powerful Lords gave discontinuance to this constant Grace of Kings.

2 *Inst.* 110. These Courts *de more* of the *Saxon* and first *Norman* Kings, was not a Custom peculiar to *England* but was an Usage in the Empire, *France* and *Normandy*; and in those solemn Assemblies the Kings of *England* personally presided.

As Law Cases increased, Appeals were more frequent from Judgments in the inferior Courts, which together with State Cases made too much Business to be dispatched in the Court *de more*; wherefore a Committee of great Lords was established by King *Alfred* to be constantly attending him to determine Matters between the times of the Courts *de more*, still reserving Cases of the greatest Weight to the great
4 *Inst.* 60. 54. Courts at the high Festivals. This Committee of great Men was afterwards called the King's Privy-Council, and the Returns *Coram Nobis in Camera*, and afterwards *Coram Nobis in Camera stellata*,

This Committee of Lords never made any Laws, never were Parties with the King

King to any new Laws, but were Parties to Royal Orders and Commands to Aldermen, *Reves*, &c. to observe and put in Execution the Laws of the Land, and Assistants to the King in judging and determining Cases.

When any great national Affairs intervened between the stated Meetings of the Nobles in the Courts *de more*, the Kings used to send out Summons to the Nobles to attend them at a certain Time and Place to treat and advise of such great Affairs in *Wite-nagemote* or Parliament, and then the Cause of such Meeting was declared to the Assembly by the King or some great Man by him thereto appointed. The Difference between Court *de more* and Parliament, is, that one met upon Special Summons, the other *ex more*, and both Courts consisted of the same Members.

Having given an Account of the Authority and Titles of the *Saxon* Kings, I now proceed to show in what Manner the *Norman* Kings shewed their Authority in parliamentary Proceedings, and what Titles they assumed in their Acts of Legislation.

The Preface to the Laws of *William I.* Archaion, is in these Words in the *Latin* Translation, 159. *viz. Hæ sunt leges & consuetudines quas Willimus Rex concessit universo Populo Angliæ post subactam terram.*

The

Mirror,
cap. 1.
Sect. 2.

The Term Conquest of the Land, is general, and implies an absolute Conquest, which he did not claim, for he at his Coronation took an Oath, wherein he promised to govern according to the ancient Laws of the Land, and in order to be acquainted with what they were, sent Commissioners into each County to enquire and report to him in *Consilio Baronum*, and his Laws were made with the Consent of his Barons, who never allowed the *Norman Kings* to govern despotically: They got the Charters of Liberties from King *John* and *Henry III.* they maintained their possessions against all Invasions from the Crown.

Orig. Jur.
13.

John Earl Warren being called before the King's Justices in the sixth of *Edward I.* to shew by what Title he held certain

Dugd. Bar.
79.

Liberties and Franchises; he shewed them an old Sword and unsheathing it, said,

2 *Inst.* 494.

' Behold, my Lords, here is my Warranty, my Ancestors coming in with *William*

Daniel, fo.
190.

' the Bastard, did obtain their Lands by the Sword, and I am resolved by the Sword to defend them against whomsoever that shall endeavour to dispossess me; for that the King did not conquer the Land and subdue it of himself, but our Progenitors were Sharers and Assistants therein and Proprietors.'

Wilkins,
230, 284.

The Name of Bastard given to King *William* by *Earl Warren*, was not by way of Contempt

Contempt or Reproach, for he was so called very frequently; and in a Letter to the Earl of *Bretagne* he so stiles himself, viz. *Willielmus cognomento Bastardus*.

The great Prince *Edward* I. hearing of *Warren's* stout Answer in Court, and that the rest of the Nobility then present therein concurred and departed the Court in some Discontent; in his great Wisdom put a stop to Proceedings of that kind, and seemed to take no Offence at *Warren*, for in a short time after he gave him three Years Respite for Payment of a Fine of 200 Marks *per Annum*, set in *Henry* III's time.

Baronage

Mar. Westminst.

Henry I. granted a Charter of Liberties, and his Laws were made with the Advice and Consent of his Barons.

Wilkins, 233.

King *Stephen* granted a Charter of Liberties, wherein he confirmed to his Barons and Freeholders all the Liberties and good Laws they enjoyed in the time of King *Henry* his Uncle, and did will and command that they and their Heirs should have and enjoy all those good Laws of him and his Heirs.

Wilkins, 310.

Henry II. granted a Charter of Liberties to the Churchmen, Earls, Barons and Free-men, such as were granted by his Grandfather *Henry*, and made his Laws at his Parliaments of *Clarendon* and *Northampton*, with the Advice and Consent of his Arch-

Wilkins, 318, 321. Spel. Works, 240. Brady, 326.

The Antiquity of National

bishops, Bishops, Abbots, Priors, Earls, Barons and Peers.

In the fifteenth of this King, *William* King of *Scots* came to *London* to continue claim to some Honours and Manors in the *North* of *England*; to which King *Henry* answer'd, it was not in his Power to determine that without Consent of Parliament.

Daniel, fo. 90, 105.

In the twenty third Year of King *Henry's* Reign, a Parliament was summoned to consult about marrying the King's Daughter to the King of *Sicily*; so high a Regard had the King to his Parliaments.

Roger Hoveden.

Wilkins, 356, 367.

Brady's Append. 126.

Tit. Hon. 702.

King *John* began his *Magna Charta* with these Words, viz. *Imprimis concessisse Deo, & hæc presenti Charta nostra confirmasse pro nobis & heredibus in perpetuum, &c. Ista sunt capitula, quæ Barones petunt & Dominus Rex concedit, signata Sigillo Johannis Regis.*

Wilkins, 381.

Spel. Works, 240.

Henry III. in the Preface to his *Magna Charta* says, he voluntarily granted it, viz. 'Of our mere Free-will have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, these Liberties following, to be kept in our Kingdom of *England* for ever: ' And his Charter of the Forest began in the same Manner.

These

These Charters were made by the Kings at the Request of the Barons and with their Advice and Approbation, and therefore King *John* styles himself in the plural Number, and so did King *Henry*, which imply the Barons Consent to the King's Act.

The Royal Acts, Charters, and Grants, were executed in the Courts *de more* in the *Saxon* Reigns, and the Kings signed in the singular Number, as *Ego Alfred*, *Ego Edgar*, *Ego Edward*, and after the King the Nobles subscribed, as *Ego Dunstanus Archiepiscopus hoc corroboravi, & subscripsi*, some after their Names added *consensi & subscripsi*, some *consensum meum accommodans subscripsi*, some *assensum præbui*, some *consilium dedi*, some *Amen dixi*, and such like Approbations, which Manner of subscribing implied, that the subscribing Nobles were more than bare Witnesses, and that their Consent was necessary to the Support of the Royal Act, Charter or Grant.

Beonna Abbot of *Medeshamsted*, with the Consent of the Monks of his Monastery, granted Lands to *Cuthbright* the Alderman; to which Grant King *Offa*, King *Egferth*, Archbishop *Higebert*, Bishop *Ceobvulf*, Bishop *Inwona*, Abbot *Beon*, many other Abbots, Bishops and great Men were Witnesses, from whence it is very probable the

meeting of the two Kings and so many great Men was at a great Council, when the Grant of *Beon* was confirmed.

In the first *Norman* Reigns, Grants concluded with *his testibus*, the King signing and after him the Barons, whose Consents were necessary to the alienation of Royal Demeans or Tainlands. King *John* in an evasive Manner stiled himself plurally to make an Appearance of having the Consent of the Barons, when in fact he could not obtain it, they being at Variance with him, till they gained from him *Magna Charta*, and there he should not have needed to stile himself in the plural Number, the Barons notoriously enough concurring with him in that.

- 1 *Inst.* 7. Anciently nothing passed from the King of Franchises, Liberties, Privileges, Mannors, Lands, Tenements or Hereditaments of any Estate of Inheritance, but with the Advice of his Council expressed under *his testibus*, and so it continued to *Richard II's* time, when *his testibus* gave place to, *In cujus rei testimonium has literas nostras fieri fecimus patentes, teste me ipso*. The Instruments concluding with *his testibus* were called Charters, and those with *teste me ipso*, Letters Patent being so named in the concluding Clause.
- 2 *Inst.* 77.

The Term *his testibus* is still continued in Patents for creating Noblemen, in Memory

mory of the Peers consenting to the Advancement of Men to new Honours, as *Edward III.* and *Richard II.* granted Titles of Honour in Parliament with Consent of the Lords, as mentioned in Page 194.

The Statute of Westminster the first, begins with these authoritative Words, *viz.* 3 *Ed. I.*
 ‘ The King willeth and commandeth, &c.’
 and in his Confirmation of *Magna Charta*;
 ‘ *Edward* by the Grace of God, &c. have
 ‘ granted for us and our Heirs that the 25 *Ed. I.*
 ‘ Charter of Liberties, and the Charter of
 ‘ the Forest, which were made by the com-
 ‘ mon Assent of the Realm in the time of
 ‘ *Henry* our Father, shall be kept in every
 ‘ Point without Breach; and that all
 ‘ Justices, Sheriffs, Mayors, and other Mi-
 ‘ nisters, shall allow the great Charters of
 ‘ the Common Law and of the Forest to
 ‘ be pleaded before them.’ This was the
 lasting Confirmation of *Magna Charta*.

After *Edward I.* summoned Knights, Citizens and Burgeffes to Parliament, the Government was a Compound of three principal Kinds: The King as Sovereign represented Monarchy, the Lords Aristocracy, and the Commons Democracy: The executive Power was solely in the King by his sworn Officers, from whence came the two grand Maxims of the Law of *England*, first, that the King of *England* is always a Minor, and secondly, that he can do no Wrong. The

The Antiquity of National

The Balance and Measure of Power in the Government was in *Edward I's* time, in the King, Church and Nobility, to the Proportion of above two Thirds of the landed Interest, and not one Third in the Commons, down to *Henry VII's* time. The Strength and Power of the Nation before, lay in the Aristocratical part: The Strength of a King must be supported either by a Nobility or an Army, and in this Nation the Power of the Crown was supported by the Nobility, who held Knights Fees, and were to serve the King in Proportion to the Knights Fees they held, which answered to a standing Army, and by this Means the two Extremes the King and Commons were supported by the Nobility; the middle part, not only supported the Crown, but screened the Commons from despotick Attempts upon the Liberties of the People by the Kings, and themselves from popular Insults.

Royal Prerogative and Privilege of Parliament were not Subjects of Debate in the *Saxon* Reigns; good Laws were made and duly put in Execution, Crimes punished by pecuniary Mulcts, ascertained in the *Saxon* Statutes, and those certain Fines never exceeded by the Kings or their Judges; but in the *Norman* Reigns, Mulcts, Fines, and Penalties were arbitrarily levied by the Judges in an exorbitant Manner, rather with a View

View to fill the King's Coffers, than for the rigorous Punishment of Vice and Immorality; these were some of the Grievances the Barons complained of in the first *Norman* Reigns, these the Grievances the People groaned under, and never rested from petitioning to be restored to the old *English* Government, to the good old Laws, and the mild and just Administration of the *Saxon* Kings and their Judges and Ministers, till they obtained Charters of Privileges from the *Norman* Kings, which Charters being under the King's Seal only, and no other Persons direct Parties thereto were often cancelled by the same Power that first granted them.

Henry III's Charter of Liberties granted ² *Inf.* in the ninth Year of his Reign, was sealed ^{*Proem.*} by the King in Parliament, witnessed by one and thirty Lords Spiritual, and thirty two Earls and Barons, with *Hugo de Burgh* also, chief Justice of *England*, and enrolled of Record in the Parliament-Roll, yet *Henry* cancelled the Charter; notwithstanding in the first Chapter, He says, ' We have ⁹ *Hen. 3.* granted to God, and by this our present ^{1.} 37. Charter have confirmed for us and our Heirs for ever, &c.' Tho' this Charter was enter'd, and the Parliament-Roll and the Barons Parties to it, yet the King afterwards cancelled it. Cancelling and confirming *Magna Charta*, was according to the Occasion that

King had for Subsidies: To appease the dangerous Troubles between him and his Barons, *Magna Charta* received a Confirmation by the Statute of *Marlebrige*, wherein the Justices, Sheriffs, and all other Ministers are commanded to observe the great Charters.

91 Hen. 3. The Statute termed *Confirmationes Chartarum de libertatibus Angliæ & Forestæ*, expresses the great Charter of King *Henry* to be made by common Assent of the whole Realm, and all Justices, Sheriffs, Mayors, and other Ministers, shall allow the great Charters of the Common Law and of the Forest to be pleaded before them; and farther that all Judgments given against the said Charters shall be void.

The Charters of Liberties of *Henry I.* *Stephen*, *Henry II.* and King *John*, were gracious Promises under the Royal Seal; but *Edward I.*'s Confirmation of the great Charter made Lords and Commons Parties to the Confirmation, and then was *Magna Charta* built upon a Rock.

Daniel fo. 207, 208. The Barons in Arms for Preservation of their Liberties, were summoned to Parliament by *Edward II.* where they declared they would no longer depend upon vain Promises and Delays, and demanded Confirmation of the Charters of Liberties or they would compel him to it by Force, as in Duty bound to the State of the Realm.

Hugh

Hugh de Burgh made Earl of *Kent* by *Henry III.* for advising him to cancel the great Charters, was degraded therefore by the Peers in Parliament, and *Hugh Spencer* Father and Son severely felt the Indignation of the Barons, for advising *Edward II.* to neglect and disregard the great Charters, and the King himself deposed by Parliament and the Succession fixt upon his Son *Edward III.* at whose Coronation *Walter* Archbishop of *Canterbury* took for the Text of the Coronation Sermon, *vox Populi, vox Dei.*

Dugd. Baron, 394.

In the Preamble to the Statutes made at the Parliament of the first of *Edward III.* the Acts were made at the Petition of the Commons presented to the King in his Council of Parliament, by the Assent of the Prelates, Earls, Barons, and other great Men, which great Men were the Tenants *in Capite* and great Ministers of State summoned to Parliament, and the Royal Part is thus expressed, ‘ The King hath granted ‘ for him and his Heirs for ever, the Articles under-written.’ The same Form was made of in the Parliament of *Westminster* in the fifth of *Edward III.* and in the succeeding Parliaments without any remarkable Variation, till the Parliament of the fifteenth of his Reign when the Laws are expressed to be made by Assent of the Prelates, Earls, Barons, and other great Men,

Men, and of the Commonalty of the Realm of *England* summoned to the said Parliament.

4Ed. 3. 14. *Edward* III. confirmed *Magna Charta* ten times in his Reign, and in his fourth Year it was enacted that a Parliament should be holden every Year once and oftener if need be; and in the thirty sixth of his
36 Ed. 3. 10. Reign it was enacted that a Parliament should be holden every Year, and for more Certainty the Words (if need be) left out, in this last mentioned Act; at this time Prorogations of Parliament were very rare; and if there were some Prorogations, yet new Summons's were to go out for a new Parliament once a Year at least. The Custom of proroguing and adjourning Parliaments was first brought into Practice by
Rapin N°. 24 p. 432. *Richard* II. to continue his packt Parliament; but even then Proclamation was made in *Westminster-Hall*, that all that had Business in Parliament must bring it in, for a Prorogation would be at such a Day.

Freedom of Speech in Debates in Parliament is implied in the very Name, *Parler la ment*; of which the two Instances of *Warren* and *Bigot* before-mentioned are remarkable ones.

Li. Cnut. 79.

The Privilege of Members of Parliament in Freedom from Arrests, either of themselves or Attendants is old *Saxon* Law; by the Laws of *Canute* and *Edward the Confessor*,

fessor, Persons going to *Gemot*, and from thence returning, shall have the King's Protection and be free from Arrests, the Word *Gemote* extends to the great *Gemot*, the *Witenagemote* or Parliament, and also to the lesser *Gemots*, the County *Gemot* or *Folcmote*, to the *Hallmot* or *Court Baron*.

11. Edw.
3. 35.

5 *H. 4. 6.*

This ancient Privilege of Members of Parliament has been confirmed and established by several Acts of Parliament, and is pleaded and allowed in Informations in the King's Name, except in Treason, Felony and Breach of the Peace, as you may find in the fourth Institute.

8 *H. 6. 1.*

4 *Inst. 24.*

The Master of the *Temple* in the eighteenth of *Edward I*, petitioned to have leave to distrein the Bishop of *St. David* his Tenant, for Rent in Arrear, to which the King answered, That it was not lawful, he being a Member of Parliament must enjoy his Privilege.

The Privilege of the *Barons* in Parliament was always very great, but the great Privilege the Commons now enjoy is of a later Growth. The *Barons* were not to be judged for any Matters in Parliament but by their Peers in Parliament. In *Edward III*'s time an Information was exhibited in the King's Bench against * the Bishop of *Winchester* for absenting himself from Parliament without the King's Licence. The Bishop pleaded to the Jurisdiction of the Court of King's Bench

Magna Charta,
cap. 14.

* *J. Stradford,* 3 *Ed.*

3.
4 *Inst. 15.*

Bench in his Case, alledging that if he had offended the King by absenting from Parliament and not appearing in obedience to the King's Writ, he was to answer the King in Parliament, *secundum legem & consuetudinem Parliamenti*, and not an inferior Court; and though the Judges did not directly allow the Bishop's Plea, yet they put off the Case from Day to Day, and made no Determination. The Reader is referred to the fourth Institute where the Record is at large.

Parl. Et.
sing. 133.

Another Instance of the Privilege of the *Barons* in Parliament is in the Person of another Bishop of *Winchester* *William de Wickham*, who being charged with Accounts of divers Sums of Money that he had received of the Kings, and other Matters, was in *Michaelmas* Term in the fiftieth of *Edward III*, order'd not to come near the King by twenty Miles; and in *Hillary*, the fifty first of the King, a Parliament was held, wherein the Bishops and Clergy were to give a Supply to the King; wherefore they made Complaint to the Archbishop of *Canterbury* of the Bishop of *Winchester's* not being summon'd to that Parliament, whereupon the Archbishop sent to the Bishop of *Winchester* to come to the Parliament and take his Place there, which he did by virtue of his Privilege of Peerage, though he had no Writ of Summons from the King.

The

The present great Power of the House of Commons being of a later Date than *Edward III's* time, I proceed to show with what Modesty they behaved in those times.

Edward III, in the thirteenth Year of his Reign, demanded an Aid of the Parliament, and the Lords granted him a tenth Part of all the Corn of their Demeans, and the tenth Fleece of Wool; but the Commons made answer, That they knew and tendred the King's Estate, and were ready to aid the same; only in this new Device they durst not agree without further Conference with their Countries, and praying Respite till another time, promised to travel to their Countries, which being allowed, it consequently appears that such Conference is warrantable by the Law and Custom of Parliament.

*Cotton's
Records,*
17.

4 *Inst.* 14.

At the Parliament of the twenty first of *Edward III*, *William de Thorp*, in presence of the King, Prelates, Earls, Barons, and Commons, declared the Parliament was called for two Causes; the first, concerning the War which the King had undertaken by Consent of the Lords and Commons against his Enemies of *France*; the second, how the Peace of *England* may be kept; whereupon, the King commanded the Commons to consult together, and that within four Days they should give answer to the King and his Council what they think therein.

*Cotton's
Rec.* 51.

On

The Antiquity of National, &c.

On the fourth Day the Commons declare that they are not able to counsel any thing touching the point of the War; wherefore they desire in that behalf to be excused, and that the King will thereof advise with his Nobles and Council, and what shall so amongst them be determined, they the Commons will assent unto, confirm and establish.

Cotton's
Recor. 58.

MS. Specu-
lum Regis.

Though the Commons were so modest in the great Affairs of the State of the Nation, as to Peace and War, yet in Matters relating to Grievances of the Commons, they were very free in presenting Petitions to the King in that Parliament for Redress thereof, particularly complaining of the King's Purveyers taking Hay, Oats, &c. without paying to the Owners thereof the true Value of them.

Daniel,
fol. 251.

14 Ed. III.

1. 18 Ed. III.

4.

To which the King graciously answer'd, That Ordinances already made should be kept, and that Purveyances should be made for the best Profit and Ease of the People: And such Petitions and Answers drawn up into Form of a Law by the Judges and King's Council learned in the Law, had the Force of a Law and Act of Parliament.

Cotton's
Recor. 59.

The Commons also complain'd that the King's Ministers, contrary to the Charters of *Edward I*, for purlieu of the Forest, afforested that which was disafforested, and put into Regard that which was out of Regard,
con-

contrary to the granted Charters, and brought vexatious Suits against the People; to which the King answer'd, That the Charter of the Forest should be kept in all Points, and as to Purlieus, if any man complain let him show his Grievance, and thereupon he shall have a Writ in the *Chancery*, and Right shall be done him.

When Petitions were presented to the King in Parliament complaining of Mismanagement of his Judges and Ministers, the King very frequently answer'd, Let any Man complain and he shall find Remedy; and such Answer of the King was a Satisfaction to the Subjects, for Redress of the Grievance soon follow'd; and the King ended not the Parliament till all Petitions were presented and answer'd, except one or two Instances in the time of his Wars with *France* and *Scotland*, which forced him to end his Parliaments abruptly.

Cott. Rec. passim.

Richard II in the sixth Year of his Reign required the Counsel of the Lords and Commons, whether he should go beyond Sea in Person to rescue the Town of *Gaunt*, or send an Army.

Cott. Rec. 282, 287.

After the Commons had debated two Days about that momentous Affair, they besought the King to assign them some Lords to join in consult with them, which the King granted, and after a long Deliberation the Commons came into the House of Lords, and

Cott. Post. 25, 28.

The Antiquity of National

Brady
2 vol. 327.

and in the King's Presence, by Sir *James Pickering* their *Speaker*, made the common Protestation, modestly alledging, That Advice in such Affairs properly appertained to the King and Lords, yet seeing it stood with their Pleasures to charge the Commons therewith, their Conceit was, that it had been best for the King in Person to have enterprized a Voyage, &c.

The Modesty of the Commons in this time was founded upon a true Sense of the Share committed to them by the Writ of Summons, *viz.* to hear and consent to such Ordinances as should be made by the King and Lords, and to petition the King in the Lords House for Redress of Grievances; and the Preamble to *Richard II's* Acts of Parliament plainly set forth the Part the Commons then had in Acts of Legislature, *viz.* *Richard by the Grace of God King of England, &c. by the whole Assent of the Prelates, Dukes, Earls and Barons of this our Realm, at the special Request and Instance of the Commons of our Realm assembled in Parliament, have ordained and stablished certain Acts and Statutes in Form following.*

Though in these times most new Laws had their Rise in the House of Lords, yet the Assent of the Commons to them was absolutely necessary to make them binding. And in *Edward III's* time, the Commons declared and protested in Parliament, that they

they would not be obliged by any Statue or Ordinance made without their Assent.

In the seventh of *Richard II*, the Lord Chancellor declared the Cause of calling the Parliament, one being about the Treaty of Peace with the *French*; to which the Commons answer'd, that it befeem'd them not to intermeddle therein, and therefore referred the whole Order thereof to the King and his Council. This Answer being in Parliament, implies, that the King's Council there meant, were the *Consiliarii nati*, the *Barons* then assembled in Parliament and not his Privy-council.

Cotton's Rec. 300.

Brady 2 vol. 394.

In the seventeenth of *Richard*, twelve Statutes were made and enacted by the King with the Assent of the Lords only.

Cot. Rec. 354.

In the tenth of *Richard II*, the Commons petition for a Regulation of the King's Household; in answer thereto, an Act passed constituting and empowering the Chancellor, Treasurer, Keeper of the Privy Seal, with certain Bishops, Temporal Lords and others commissioned by the King to be of his Council, to examine the State of his Household, Courts, Officers, Ministers, &c. and to correct and amend, &c. And this was the only Act that passed in that Session; and enough it was indeed, for this Commission being confirmed by King, Lords and Commons, gave the Commissioners more than Royal Power.

Brady 2 vol. 365.

Brady vol.
2. 367.

The next Year the King held a Council at *Nottingham*, where the last mentioned Commission and Act that confirmed it were canvassed, and Question was put to the two chief Justices and other Judges how those were to be punished that forced the King to grant them, who answered they ought to be punished as Traitors.

Acta Regia
N^o. 7. pag.
9. i

Daniel 2d.
Part, fol.
12.

Brady vol.
2. 366.

It was also demanded how those were to be punished, that in a Speech to the King, reckoned up the King's Faults, as following wicked and evil Counsellors Advice, taking desperate Courses, in delivering what he had in *France* to that King, and putting himself under his Protection, &c. To this the Judges and Serjeants, the King's Council answered, they ought to be punished as Traitors.

Brady vol.
2. 366,
379.

It was also demanded how he was to be punished, that moved in Parliament the Statute might be sent for by which *Edward II.* was deposed, and how he was to be punished that read that Statute to the King and threatned him with the like. To which the said Judges and Lawyers answered unanimously, that he who moved for the said Statute be sent for, and he that read it to the King deserved to be punished as the highest Criminals and Traitors.

Rapin N^o.
24. pag.
433.

To these and other Answers the said Judges and Lawyers set their Hands and
Seals,

Seals, which Instrument was executed in the Presence of the Archbishop of *York*, the Archbishop of *Dublin*, three other Bishops, *Robert* Duke of *Ireland*, *Michael* Earl of *Suffolk*, *John Rippon* Clerk, and *John Blake*, Esq;

The Judges and Lawyers were impeached in Parliament and convicted of Treason and most of them hanged as Traitors; some others imprisoned during Life, as were some of the Witnesses.

King *Richard* intending to call a Parliament in the twenty first Year of his Reign, first summoned the several Sheriffs and gave them a Charge to suffer none to be elected and returned Members to the Parliament, that would not before-hand promise to come into the King's Measures; he told them at the same time he would raise an Army to enable him to punish such of his Subjects as should offer to oppose his Will and Pleasure, and asked them what number of Forces each County was able to furnish; the Sheriffs on their Part more just than the Judges had been on theirs, made answer, that the People would never bear being deprived of the Freedom of Elections, and as to raising an Army the People would never be brought to take Arms to oppress those noble Lords who had gained the Affections of the People by standing up for their Rights and Privileges.

Brady vol. 2. 389.

Cot. Rescor. 321.

Rapin N^o. 24. pag. 430.

Brady vol. 2. 397.

The Antiquity of National

In this Parliament (in which the Commons were returned according to the King's Will and Directions) was repealed the Commission and Statute of the tenth of his Reign for Commissioners to regulate the King's Household, &c. at the Prayer of the Commons; and it was enacted that no such Commission should be made for the future, and he that should move for, or endeavour to procure such to be made in any time to come, being thereof duly convicted, should suffer as a Traitor.

Cor. Recor.
368.

The Pardons to the Duke of *Gloucester* and Earls of *Arundel* and *Warwick* granted in the Parliament of the eleventh of his Reign were revoked and annulled.

Brady vol.
2. 399.

This Parliament of *Westminster* was on *Michaelmas* Day adjourned to the twenty seventh of *January* following, then to meet

Cor. Recor.
370.

at *Shrewsbury*, where the Prelates and Lords Temporal swore to maintain the Ordinances and Judgments made and given in that Parliament.

Then the King asked the Knights of Shires if they would hold and keep the said Oath, who promised with loud Voice to observe and keep the same.

And then Lords and Commons judged and ordained that the Parliament of the eleventh of the King's Reign should be annulled and holden for none, and that all the Judgments, Ordinances and Statutes made

made in the same should be revoked and annulled.

On the last Day of the Parliament the Commons made known to the King that they had before them several Petitions not read or answer'd, and other Matters which for Shortness of Time could not be answered and determin'd; therefore prayed that it would please the King, to give full Power to certain Lords and others whom he pleased, to examine, answer, and dispatch the Petitions and Matters undetermin'd; to which Prayer the King assented, and by Authority and Assent of Parliament ordained and assigned *John Duke of Lancaster*, and ten other Lords and six Commoners to determine such unfinished Matters; which, says *Lord Coke*, is against the Dignity of Parliament. *Bishop Burnet* says nothing can so effectually ruin this Nation as a bad Choice of Parliament-men, therefore it is the constant Character of a good Ministry, who design nothing but the Welfare and Happiness of the Nation, to leave all Men to a due Freedom in their Elections; so it is the constant Distinction of a bad Ministry, that have wicked Designs, to try all the Methods of Practice and Corruption possible to carry such an Election, that the Nation being ill represented by a bad Choice, it may be easy to impose any thing on a Body of vicious, ignorant, and

Brady vol. 2. 404.

Cor. Recor. 374.

21 Rich. 2. 16.

4 Inst. 42.

Reformation, 3d. Part, pag. 234.

The Antiquity of National

ill-principled Men, who may find their own mercenary Account in selling and betraying their Country.

The King's packt Parliament, for present Bribes, Pensions and Places of Profit, voted it high Treason for any Member of Parliament, to move any Matter, before the King's Business recommended by him or his Ministry was fully finished, thereby running the Risque, for present Gain, to render Parliaments useles in all future times.

The Liberties of *England* are in no Danger from a free Parliament made by the Choice of the People, without Interposition of the King or his Ministers.

Rapin N^o.
24 P. 432.

Daniel 2d.
Part, fol.
22, 23.

The Duke of *Gloucester* being murdered at *Calais*, the Earl of *Arundel* executed, the Earl of *Warwick* banished to the *Isle of Man*, the Archbishop of *Canterbury* banished and his Estate confiscated, the Lord *Cobham* also banished, and many other good Patriots treated with such tyrannical Barbarity and Severity, the rest were intimidated, and the People being oppressed by their own Representatives and curbed by the Magistrates, found no other Safety, but to feign an Approbation of what they durst not contradict, nor could by any Means prevent.

The King having thus taken off some great Men, banished others, humbled others, by Fear of like Treatment, and gained many

many into his Measures, with new advanced Titles of Honour, Grants and Pensions, which with the Peoples feigned Obedience to his absolute unlimited Power, so far lulled the King, that he went on over hastily with his darling Project of fixing and establishing his arbitrary Power, removing all Obstacles thereto one way or other: The Duke of *Norfolk* he banished for his whole Life, and the Duke of *Hereford* for ten Years, whose Father the Duke of *Lancaster* dying soon after, the King seized all his Estate, and ordered that the Banishment of his Son the Duke of *Hereford* should be perpetual, forbidding all Manner of Persons to speak a Word in his Favour on Pain of Death. Cop. Recor.
380.

Soon after a Rebellion broke out in *Ireland*, which the King went over in Person to suppress, and improvidently carried all his Forces thither. The People of *England* being under a general Discontent, took the Opportunity of the King's Absence to invite over the Duke of *Hereford*, who upon his Father's Death had taken the Title of Duke of *Lancaster*, and he relying upon the general Discontents of the People and their Impatience to take any Opportunity to throw off the Yoke King *Richard* had collar'd them with, accepted the Invitation, and came over into *England*, landing at *Ravenspur* in *Yorkshire*, in July 1399.

The Antiquity of National

As soon as the Duke of *Lancaster's* landing was known, Nobility, Gentry, and their Men flocked to him in such Numbers, that in a few Days his Army amounted to above sixty thousand Men; with this great Body he marched directly to *London*, where the Gates were opened to him with Joy, as their Deliverer from Tyranny and arbitrary Power.

The Duke went from *London* to *Bristol* and laid Siege to that City, to which Place the King's Ministers were retired; he made himself Master of the Place, and caused the Earl of *Wiltshire*, and two Knights of the King's Privy-Council to be beheaded.

By reason of contrary Winds for a above Month, King *Richard* had not an Account of the Duke's Proceedings and Success in *England*; the first News of it hastened him home, when to his Mortification he found the greatest Part of the Kingdom had declared for the Duke of *Lancaster*.

The King made some Endeavours to recover his Dominions, which proving unsuccessful, he surrendered himself into the Duke's Hands, and came with him to *London*, where the Duke was received with all imaginable Expressions of Joy, and the King was sent to the Tower, and Articles exhibited in Parliament against him, where the King was solemnly deposed like *Edward*

Daniel 2d.
Part, fol.
45.

Brady v. 0.
2. 420.

ward II. and signed a Resignation of his Crown, Royal State, and Dignity.

Richard being divested of the Crown, *Henry* Duke of *Lancaster* stood up in Parliament and challenged the Realm of *England* and the Crown with all the Members and Appurtenances, as his in Right of Blood, he being descended from *Henry* III. He was indeed descended from *Edmund Crouchback* Earl of *Lancaster*, second Son of *Henry* III. his Mother *Blanch* being Daughter and Heir to the first House of *Lancaster*, and Wife of *John* of *Gaunt* Duke of *Lancaster* his Father. *Henry* claimed from *Henry* III. well knowing that *Edmund Mortimer* Earl of *March* was next in Blood, he being Grandson to *Philippa* Daughter of *Lionel* Duke of *Clarence* third Son of *Edward* III. whereas his Father *John* of *Gaunt* was fourth Son; this postponing the Earl of *March* afterwards occasioned the War between the Houses of *York* and *Lancaster*; the *Lancastrians* like *Henry* IV. deriving their Title from *Crouchback*, who they pretended was eldest Son of *Henry* III. and set aside for his Deformity, whereas his Surname was from wearing the Sign of a Cross upon his going into the *Holy Land*, and not from any Deformity or Insufficiency but that of Birth. I have been more particular in my Account of *Richard* II's Reign,

Brady's Tracts,
384.

Daniel 2d.
Part, fol.
48, 50.

Dugd. Bar.
778.

The Antiquity of National

Reign, because there appears therein great Variety in parliamentary Proceedings.

Whilst he had free Parliaments he could not put in Execution his Projects for arbitrary Government, on which he was so bent, that he stopt at no indirect illegal Methods, that his corrupt and bribed Ministers put him upon, to get a packt Parliament to his Mind, that would serve his Turn, as he thought, which contrarily proved to his own Ruin and Deposition.

A corrupt, bribed, packt Parliament, may invade and set a large Step towards destroying the Rights and Privileges of the People, and may be the Tools to undermine and destroy their own and the Nations Rights and Liberties: Ambitious Princes can't overturn our happy Constitutions, without the vile Assistance of a corrupt Ministry, and bribed packt Parliament.

If ever the unhappy time should come, wherein the best of Governments, a Monarchy limited by Law should be overturned; without a Spirit of Prophecy I may venture to say, its Ruin must come from St. *Stephen's* Chapel and *Westminster-Hall*. A free Parliament and upright Judges are the Bulwark of the *English* happy Constitution. An *English* Monarch at the Head of a Free Parliament, with just and righteous Ministers, have no Reason to en-

v y

vy the Grandeur or Power of any of the most despotick Princes of the World: And on the other side unfortunate have most of the *English* Monarchs been, that endeavoured to stretch Prerogative beyond the legal Constitution, and how great and glorious have those been that have religiously preserved the Laws and free parliamentary Privileges.

Where were known greater Princes in their times, than our *Edward I.* *Edward III.* and *Henry V.* all of them held frequent Parliaments and redressed the Grievances as soon as made known to them by Petitions in Parliament, and were in such high Esteem with the People that they reigned in their Hearts and Purfes, which *France* and *Scotland* very sensibly felt, from the victorious Arms of those brave Princes, and their Subjects who assisted them with Purse, Heart and Hand.

A quite different Figure at Home and Abroad was the Lot of *Edward II.* and *Richard II.* who were led out of the happy Road of Government, by Ambition of reigning without controul, whose Foible being evidently perceivable, that by Parasites, greedy ambitious Favourites and Ministers, they were led out of their safe way to that of their own Destruction and Ruin: With the Prince falls the Favourite, and with the good succeeding King rises
the

The Antiquity of National

the depressed Patriot. 'Tis none of the least Qualifications of a Prince to be well versed in the History of other Princes and their Laws and Customs, together with the Genius of the People their Subjects; and very remarkably useful it must be to a Prince to be acquainted with the History of his Predecessors, of their Wars and Negotiations with Neighbour Princes; but above all most necessary for a Prince to be very well acquainted with the Constitution of his own Country, to know the Bounds of the Prince's Prerogative, and the just Rights, Liberties and Privileges of the People.

In the History of his Predecessors he has a fair Field to exercise his Judgment, when he meets with the brave and successful Actions of a great and glorious Predecessor; it's Matter of advantageous Speculation, to trace out the Steps he took, how he rose by Degrees to the Pinnacle of Honour and Glory, what Ministers he employed, what Councils he had, and what good Laws were made in his time, what Harmony there was between him and his national Councils, what Grievances were redressed and in what Manner, great Variety of such like Inquiries may be made that may be of great Service to a reigning Prince in his Conduct.

When

When a Prince in searching the History of his own Country, falls upon the Life of a Prince that was remarkably unhappy and uneasy through the greatest part of his Reign, the Inquisitive Royal Reader will carefully search into the Measures taken by the great and happy, and what different Steps rendered another Prince unhappy, and uneasy in his Administration, in order to avoid the Measures of one and pursue the Conduct of the other.

Had a late unfortunate Prince that bore the Addition of Second, before he closeted such as were likely to be chosen Members of Parliament and before he raised a standing Army, which was always looked on as a Grievance in the *English* Nation; had he I say, duly weighed the Misfortunes that attended *Richard* II, in the Measures he took to pack a Parliament and raise an Army, to protect his Sheriffs in making false and undue Returns of Members to serve in Parliament, and other such like Mistakes in Government, he would not have judged the abdicating his Crown and Country his only Safety.

Amongst the rest of the Privileges of Parliament, the Wages to the Members of the House of Commons must not be omitted, and proper in point of time to come in here, being about this time fixed by Act of Parliament.

Henry

The Antiquity of National

Brady,
633.

Brady's
Tracts,
141.

Henry III, in the Year 1258, sent four Knights into each County to inquire and make report to the King and his Council of the Grievances in each County, and these Commissioners had Wages paid them, which were levied by the Sheriffs in their several Counties by virtue of the King's Writs.

4 *Inst.* 46.

12 *Rich.* 11.
12.

The Wages of Knights, Citizens and Burgeses of Parliament were levied by virtue of the King's Writ before any Act of Parliament was made in the Case: In the Writ the Sheriff was ordered to levy 4 s. a Day for each Knight, and 2 s. a Day for each Citizen and Burges during the time of their Service in Parliament; as appears in the Rolls of *Edward III*, and *Richard II*, *de expensis militum*.

Cot. Recor.
164.

The Commons in the first Year of *Richard II*, petitioned the King in Parliament, that all Persons whatsoever, having Lay-Fee, might contribute to the Expences of Knights, Citizens and Burgeses; to which the King answer'd, that the Lords of the Realm would not so lose their own Liberties and Privileges; and the Form of the ancient Writs for Parliament Wages was to levy *de communitate*: And by the Writ in the Register, it appears that Tenants in ancient Demean and Copyholders were exempted from paying Parliament Wages, by these Words, *de Expensis militum non levandis ab hominibus de antiquo dominico, nec ab natis.*

Register,
191, 261.

The

The first Statute for levying Expences of Knights coming to Parliament was in King *Richard's* time, and was in Affirmance of the Common Law, the Words of the Statute being that the said Levying be made as it hath been used before this time. 12 Ricb. 2. 12.

The other part of the Act answers in some Measure the aforesaid Petition of the Commons in the first of *Richard*; It enacting, That if any Lord or any other Man Spiritual or Temporal, hath purchased any Lands or Tenements, or other Possessions, that were wont to be contributory to such Expences, before the time of such Purchase, that the said Lands, Tenements and Possessions, and the Tenants of the same, be contributory to the said Expences, as the said Lands, Tenements and Possessions were wont to do before the time of the same Purchase.

Henry IV's Right to the Crown was recognized by Act of Parliament in his first Year, which Act is not in the printed Statute Book, but is upon the Parliament Roll. This Act not only settled the Crown upon *Henry IV*, but also entailed it upon his eldest Son *Henry*, and if he died without Issue, then upon his other Sons successively in order. Cot. Recor. 666, 391. Daniel 2d. Part, fol. 51, 258.

The Issue of *John of Gaunt* by *Katherine Swinford* tho' born before Marriage, were

The Antiquity of National

were legitimated by Act of Parliament and confirmed by the Pope's Bull.

MS. Jour. of Parl. 259. Henry IV's Title to the Crown needing all the Supports could be had, he courted a popular Party, and kept very fair with his Parliaments in the former part of his Reign; till thinking himself securely fixed on the Throne, and being a little too forgetful of the male Administration of his immediate Predecessor, which gave him the Opportunity of supplanting him, began to govern with a high Authority, which occasioned private Caballing of the great Patriots of both Houses, to concert Measures for Preservation of their Liberties and Privileges, which coming to the King's Knowledge, he in time desisted from pushing on the Execution of his Project.

Cot. Recor. 465. The King in his ninth Year demanding a Subsidy, and the Manner and Measure of it being debated in Parliament, some of his Favourite Lords gave Account to the King of the Speeches *pro* and *con*, from whence the King dispensed his Frowns and Favours according as the Members pleased or displeased him, and thereupon sprung a great Uneasiness between the Court and Country Party; for the appeasing whereof, 9Hen. iv. 1. the King gave his Royal Assent to an Act for Confirmation of Liberties: And Lords and Commons agreed upon a standing Order, that in all Parliaments in the Absence of
of

of the King, it should be lawful as well to the Lords by themselves, as to the Commons by themselves, to debate of all Matters touching the Realm, and of the Remedies, and not to disclose the same to the King before a Determination thereof made, and that by the Mouth of the Speaker, and to this Order the King accorded, and then ended the Parliament and the Members returned home well pleased.

The Preamble to the Statutes passed at the Close of this Parliament, indicates some Uneasiness in the People, and also the King's Readiness to redress the Grievances, as by the Advice of the Lords Spiritual and Temporal at the Instance and Request of the Commons, he hath caused to be ordained and establish'd Statutes in Form following; and such was the Preamble of all the Acts of Parliament in this King's Reign and in that of his Predecessor, *viz.* ' With the Advice
' and Consent of the Lords at the Request
' of the Commons, and their Consent to
' Acts was not expressed in the Statutes
' till succeeding Reigns, which shall ap-
' pear in the Sequel, when the Consent of
' the Commons was expressed in the Pre-
' ambles to Statutes. '

Henry IV not being able to obtain a Subsidy prolonged the Parliament so as by Durefs to gain it. Sessions of Parliament being in those times very short, the Mem-

bers chose to comply rather than be kept too long from home.

Stowe
Howse,

330.

4 Inst. 48.

10.

Rapin, N^o.

25. pag. 50.

Parl. Sum.

366.

3 Inst. 2.

Acta Regia

N^o. 7. pag.

67.

Daniel 2d.

Part, fol.

89.

Parl. Sum.

368.

20 s. upon

a Knight's

Fee. 20 d.

upon 20 l.

Land.

12 d. upon

every 20 s.

in Goods.

MS. Parl.

cap. 5.

Stowe

Howse,

330.

Daniel 2d.

Part, fol.

76, 77, 89.

In the Parliament of *Coventry* of the sixth of *Henry IV*, there were no Lawyers, the Sheriffs being ordered by the King not to return any that were learned in the Law, wherefore the Parliament was afterward called *Parliamentum indoctum*, the lack-learning Parliament; which finding it difficult to raise a Supply sufficient to answer the King's Expectation, a Member of the Commons proposed seizing the Lands and Goods of the Church, to which the Archbishop replied they proposed Taxes for their own private Advantage, to share amongst themselves for their pretended Charges in the King's Service; and the Archbishop and Bishops getting over some of the Temporal Lords to their side, prevented the intended Seizure of the Lands and Goods of the Church. This Parliament being prorogued to the fourteenth of *January* to meet at *Westminster*, gave such an exorbitant Tax to the King that the Records thereof were ordered to be burnt, that no such Precedent might appear to Posterity, and *Wal-singham* who lived at that time either would not or durst not put the Particulars into his History. In the tenth Year of his Reign, the Parliament again moved to have the Church Lands applied to the Use of the Publick, but the King forbid their Proceeding.

Henry

Henry IV used several illegal Methods to have such Members chosen to sit in Parliament as were his devoted Tools; but those his Endeavours produced good Laws.

At the grievous Complaint of the Commons in the Parliament held at *Westminster* in the seventh of his Reign; a good Act was made directing the Sheriffs how to proceed in Elections, and how to make their Returns; for Particulars I refer you to the Act. 7 Hen. 4th
15.

And in the Parliament of *Westminster* of the eleventh of Henry IV, an Act was made to strengthen that of the seventh of his Reign, adding a Penalty of one hundred Pounds upon Sheriffs that did not proceed regularly in Elections or make regular Returns, to be recovered by Order of the Justices of Assize; and that Knights unduly elected and returned should lose their Wages of Parliament. 11 Hen. 4th
1.

Before these Acts of Parliament were made, Sheriffs were too often influenced by the Court, to make partial Returns of Members, such as had not the Majority of Votes, if they were but well attached to the Ministers; which is a Matter of such fatal Consequence as to require the utmost Vigilance of the Legislature to prevent it; the Liberties and Properties of the People of *England* depending upon the Freedom of electing, and impartial returning Repre-

*Rapin N^o.
35, 71, 74.*

sentatives duly elected to serve in Parliament: If ever the time should come, that the Representatives in Parliament be chosen by a Court Influence, Liberty will receive a necking Blow; if ever the Electors should become so mercenary as to sell their Votes to a purchasing Ministry, they may be justly accused of selling their Country, and may chance never to have an Opportunity of so vile a Practice again, and may be called *felo's de se*.

7 Hen, 4.2. In Henry IV's time the Succession of the Crown was settled and confirmed in Parliament upon his eldest Son Prince Henry, and in case of Failure of Issue from him on the Lords Thomas, John and Humphrey.

Cot. Recor. 416, 465. In Henry IV's time the House of Commons petitioned the King that they might have Advice and Communication with certain Lords about Matters of Moment for the common good of the Kingdom, which Prayer the King graciously granted, but with Protestation that he did it not of Custom but of his special Grace, which Protest the King ordered to be entered in the Parliament-Roll, and the Lord Steward and Secretary brought the King word that the Protest was enter'd, and that the Commons acknowledged they could not have any such Lords to commune with them of any Business of Parliament, without special

special Grace and Command of the King himself.

In the Parliament of the second of *Henry IV*, the Commons declared, that it was not the Use, that they should grant any Subsidy, before they had answer to their Petitions and pray the Observation thereof from thenceforth. The King therein requireth Conference with the Lords, and at the last Day of the Parliament it was answered, that there was never such Use seen, but that the Commons should first make an end of all other things, the which Order the King meant not to alter. *Hen- Cot. Recor.*
406.

In this Parliament the Commons petitioned the King, that, because it might happen, that some of the Commons to please the King and advance themselves, might relate some things debated in the House before they were determined, discussed or accorded of by the Commons, it would please his Majesty to give no Credit to such Reports. *Journal,*
469.

The King's Answer was, that it was his Will the same Commons should have free Deliberation, to debate of all things for the Advancement and Honour of the King and his Realm, and that he would never hear or give Credit to any such Relation till it was sent him by the whole House, as before-mentioned in Page 305.

Col. Recor.
408.

On the last Day of the Parliament the Commons kneeling before the King, beseech him to pardon them, if happily they have through Ignorance offended, which Petition the King granted.

Henry V, according to the Act of Parliament of the seventh of *Henry IV*, succeeded to the Imperial Crown of *England*. The Acts of Parliament made in his Reign, are expressed to be by the Advice and Assent of the Lords Spiritual and Temporal and at the special Instance and Request of the Commons.

Rapin N°.
25. P. 90.

His first Step was a good Specimen of his intended Justice, of which the People had such a Confidence, that contrary to Custom they offered to take the Oath of Allegiance before he was crowned, which he in a modest obliging Manner declined receiving that Testimony of their Esteem, telling them it was not reasonable that they should swear to be faithful to him, before he himself had taken a solemn Oath to govern them with Equity and according to Law.

Cotton's
Posthu. 29.

In his first Year he advised with his Parliament how to cherish his Allies and restrain his Enemies, and a secret Committee of Commons was appointed to confer with the Lords, about his great Affairs.

In his second Year he advised with his Parliament about his Claim to *France*, which

which he would prosecute to Death if they thereof approved, and afforded him Aid, which they freely promised.

Such extraordinary Care was taken by the Legislature in these times to prevent undue Elections and Returns of Members to Parliament, that the two good Acts of *Henry IV* were farther improved by *Henry V*, who gave a strong Indication at the beginning of his Reign, how prosperous it was like to prove: The first Act of Parliament that passed, and that in the first Year of Hen. 5. 1. his Reign, was that the Statutes of Elections should be holden and kept in all Points: And farther, that Knights of Shires from thence forward should be chosen out of such Knights as are resident within the Shire the Day of the Date of the Writ of the Summons of the Parliament; and that the Knights and Esquires, and others that be Electors, be also resident within the same Shires; and that the Citizens and Burgeses be chosen Men, Citizens and Burgeses Resident dwelling and free in the same Cities and Boroughs, and no other in any wise. This Act was made pursuant to a Petition of the Commons, and many other Petitions of the Commons in this Parlia- Cot. Recor. 538. ment were graciously answered by the King. He paid all his Father's Debts which much exceeded what he left. This King opened every Session of Parliament

D 4

with

with a Declaration by the Mouth of his Chancellor, that the Church, all Persons and Corporations, should enjoy their Liberties.

Cot. Recor.
537, 538.

In the Reign of this great King, Royal Prerogative and parliamentary Privilege were religiously preserved; the King freely granting the People their Rights and declaring his own; the Commons Petitions he was free to receive, and in his first Parliament granted all the Petitions but one, and in his second Parliament all likewise but one; and with those few Refusals, declared that it was a Part of his Regality to grant or deny such Petitions as he pleased.

Very few Petitions were rejected by this King, he infringed not the Privileges of Parliament, and did not overburden his People with Taxes notwithstanding his foreign Wars; his Demands were no more than Necessity drove him to, he was never refused the Aids he demanded, he reigned in the Hearts of his People at home, and was great and victorious abroad.

Acta Regia
N^o. 9. 226.
N^o. 10.
232.

This King made no Attempt upon the Liberties and Privileges of Parliament; Lords and Commons enjoyed their separate and united Privileges without any Interruption; neither was he envied in any of his Prerogatives, nor were his Subsidies grudged, so moderate were his Demands.

Cotton
Posthu. 30.

In his third Year a Treaty of Peace being offered by the *French King*, *Henry* refused

fed to conclude Peace till he had thereto the Advice and Assent of his Lords and Commons.

In his fourth and fifth Years the Treaty held on, but no Peace being concluded, he calls a Parliament and advised with Lords and Commons in what Manner to carry on the War.

In his fifth Year another Parliament was called by *John Duke of Bedford* his Brother and Lieutenant, where in the Presence of Lords and Commons, the Regent declared that it was the King's Pleasure, that the Church and all Estates should enjoy their Liberties, and that the King required their Advice in what Manner to carry on the War. *Cot. Recor.*
553.

In the seventh Year of his Reign a Parliament was also held by the Duke of *Bedford* and the like Advice required.

In the ninth Year of his Reign the Duke of *Bedford* held another Parliament, where the Causes were declared to be for making good Laws and to have the Advice of Lords and Commons about the State of the Realm, and in what Manner to defend the Frontiers. *Cot. Recor.*
559.

In the eleventh of his Reign the Treaty of Peace was laid before the Parliament, and ratified and confirmed by Lords and Commons, such was the Harmony and Agreement between this King and his Parliaments,

liaments, that the King was the greatest of our *English* Monarchs and the Nation most happy during his auspicious Reign, which began with good Agreement between King and Parliament, and so continued and so ended.

This great King as he allowed his Parliament their Liberties and Privileges, so did he exert his Royal Prerogative equal to any of his Predecessors, in frequently stopping Proceedings of the Judges in *Westminster-Hall*; he commanded the Justices there to stay the Arraignment of one *Varney* till they had Commandment from him and his Council.

Henry VI at eight Months of Age succeeded the great and glorious *Henry V* his Father, on the thirty first of *August*, 1422, and his first Parliament was held the ninth of *November* following, where it was declared as usual that all Estates should enjoy their Liberties; and it was enacted that all Estates should have their Liberties confirmed, without the Word *concedimus* to be in the Confirmation. The Parliament-Roll of the first, has this, but the printed Act is in the second of his Reign.

But the general Stile to other Acts was the same as in his Father's time, only an Addition was made in the King's own Stile and Title, in the Act of Parliament for altering the King's Seals, the *Circumscription* being

Cot. Recor.
563, 564.

2 Hen. vi.
1.

being enacted to be, *Henricus Rex Franciæ & Angliæ, Dominus Hiberniæ*, he being crowned King of *France* at *Paris* on the 17th of *December*, 1430, in the ninth of his Reign. Rapin N^o.
28. p. 297.
Daniel
Part. 2. fo.
137, 202.

The King by his Letters Patents which were confirmed in Parliament, appointed his eldest Uncle *John* Duke of *Bedford*, Protector and Defender of the Realm and Church of *England* and chief Counsellor of the King, and that in his Absence the Duke of *Gloucester* the King's next Uncle, should supply the said Office, and accordingly in full Parliament took upon him the said Office, with Protestation that the same should not redound to the Prejudice of the Duke of *Bedford* then in *France* the King's Regent there. Cot. Recor.
564.

In several Parliaments of this King, the Advice of Lords and Commons was required in Cases of Peace and War, and in the ninth of his Reign it was enacted that certain of the King's Blood in the Act named should treat of Peace with the Dauphine of *France*. Cotton
Posthu. 30.
Cot. Recor.
599.

The King by Authority of Parliament granted to the Duke of *Gloucester* the Office of Chamberlain of *England*, with all the Profits at the King's Pleasure, and in like Form granted to the said Duke the Office of Constable of *England*, and also that he should dispose of all Benefices in the King's Gift, being above the Value of twenty Marks. Cot. Recor.
564. 584.
It

The Antiquity of National

It was also enacted that all such Petitions as were not ended in that Parliament, should be committed to the Council, to be determined according to their Discretions, and the same was enacted in some other Parliaments of this King.

It was also enacted that nothing should be determined in Council but by six at least, and in all great Cases, by all or the most; and wherein the King is to be conferred withal, that nothing be therein done without the Assents of the Dukes of *Bedford* and *Gloucester*.

Cat. Recor.
568.

In the Second of *Henry VI*, Sir *John Mortimer* of *Bishops-Hatfield* in *Hertfordshire*, being committed to the Tower for Suspicion of Treason, broke out of the Tower, for which Breach he was indicted of Treason, and thereupon the same Indictment by Consent of Parliament was confirmed to be good, and Sir *John* being afterwards apprehended was brought to the Parliament, against whom, upon the same Indictment, Judgment was given that he should be carried to the Tower, and from thence be drawn through *London* to *Tyburn*, there to be hanged, drawn and quarter'd, his Head to be set on *London-Bridge*, and his Quarters on four Gates of *London*.

This was a bad Precedent against Liberty and Right, that a Man should be
con-

condemned and executed upon a bare Indictment without Arraignment, or due Trial.

In the Parliament-Roll of the third of *Henry VI*, are the Arguments of the Challenge made by *John Mowbray* Earl Marshal, to have his Place in Parliament above *Richard* Earl of *Warwick* with the Arguments on both Sides, the Particulars whereof you may see in Sir *Robert Cotton's* Abridgment of the Records of the *Tower*, where it appears that the Parliament determined the Controversy in Favour of the Earl Marshal, and confirmed King *Richard II's* Letters Patents that created his Father *Thomas Mowbray* Duke of *Norfolk*, and that the said *John* should from that time be held and reputed Duke of *Norfolk*, and use and enjoy the Stile, Title, Name, and Honour of Duke of *Norfolk*, according to the Tenour of the aforefaid Letters Patents. Cor. Recor. 574.

In the fourth of *Henry VI*, an Act of Parliament was made relating to Knights of the Parliament; the printed Act (says Sir *Robert Cotton*) agrees with the Record; where that Act is printed I can't find, it is not in *Petyt's* Statutes printed in the Year 1542, nor in *Tottell's* Statutes printed *Anno Dom.* 1576, nor in the modern Editions of the Statutes.

This Parliament was summoned to meet at *Leicester*, and Orders were sent to the Mem-

Members that they should not wear Swords, so they came to Parliament (like modern Butchers) with long Staves, from whence the Parliament got the Name of the Parliament of Batts; and when the Batts were prohibited, the Members had Recourse to Stones and leaden Plummets.

Cot. Recor. This Parliament was opened with the
582. Confirmation of Liberties.

6*Hen. vi. 4.* By a Statute of *Henry VI*, it was enacted that Knights of the Shire and Sheriffs, against whom any Inquest for undue Elections is found before the Justices of Assize shall have their Traverse thereunto; by this Statute it appears that the Right
11 *Hen. iv.* of Elections was then tried before the King's
1. Justices, as in Page 307.

Cot. Recor. In the eighth of *Henry VI*, *William*
596. *Lake* Servant to *William Mildred* a Citizen in Parliament for *London*, being committed to the *Fleet* upon an Execution of Debt, was delivered by the Privilege of the Commons House.

8 *Hen. vi.* The Elections of Knights of the Shire
12. to be made by the more Voices of the People dwelling in the Counties; having each forty Shillings besides Reprise; and the Knights to be chosen to be Resident within the same Counties; and the Sheriffs may examine the Electors how much they can expend by the Year.

A Chooser of Knights of the Shire must ^{10 Hen. vi.} be Resident and have forty Shillings Free-^{2.} hold within the County.

In the twenty third of *Henry VI*, an ^{23 Hen. vi.} Act passed in Confirmation of former Acts ^{15.} about Elections of Commoners with several beneficial Additions, which you may see in the printed Act.

Henry VI being a weak Prince, his Queen *Margaret* of *Anjou* took Advantage ^{Rapin N^o.} of his Indolence, and with the Assistance ^{28. pag.} of *Henry Beaufort* the rich Cardinal of *Winchester*, Duke of *Buckingham*, and Marquess of *Suffolk*, got the Duke of *Gloucester* removed from Council Table: His ^{Daniel 2d.} steady and intrepid Adherence to the In- ^{Part, fol.} terest of King and People, had made him ^{139.} very popular, but his Honesty stood so much in the way of the Queen and the Ministry, that he must be demolished one ^{Cot. Recor.} way or other: He was so popular in *Lon-* ^{633.} *don* that it was thought not proper to accuse him there; so the Queen and Ministry having packt a Parliament for their Purpose, which was summoned to meet at *St. Edmunds-Bury* on the tenth of *February* in the twenty fifth of *Henry VI*; in the very first Day of the Session the Duke was apprehended and put into close Confinement for pretended Crimes, and the next Day was found dead in his Bed, believed to be murdered by the Creatures
of

The Antiquity of National

of the Ministry: So fell the good Duke of *Gloucester*, and was soon followed by the Cardinal, who upon his Death-bed grieved that he that could buy Parliaments and boundless Power for himself, could not with Money procure Continuance of his Life.

After the Queen had got rid of the good Duke of *Gloucester*, she resolved with the Advice of her Minions and Favourites, to be in the place of Protector or Prime Minister, which Authority she exercised with such Impetuosity, as to disgust the greatest Part of the Nobility and People, who were kept in good Temper by the wise and moderate Administration of the Duke of *Gloucester*, who was the great Support of the House of *Lancaster*, after whose Death the House of *York* daily gain'd ground, their Interest growing with Lords and Commons, as the Queen and her Favourites Administration grew more and more grievous to all.

The Commons never ceas'd complaining of the Duke of *Suffolk* the Queen's chief Adviser and Favourite, till they got him to be banished, who taking ship at *Ipswich*, for *France*, was met at Sea by an *English* Man of War, and had his Head chopp'd off on board and thrown into the Sea.

The Queen and her Favourites so much disgusted the People, that in the twenty ninth of *Henry VI*, the House of Commons petitioned

petitioned the King, that *Edmund Duke of Somerset, Alice Pool, Widow of William Pool* late Duke of *Suffolk*, and twenty nine others in the Petition named, should be abandoned from the King's Presence, during their Lives, and not to come within twelve Miles of the Court, for that the People speak evil of them.

The King's Answer in Parliament to this Petition, was, that the King of his meer Motion is contented, that all shall depart unless they be Lords, and a few of them whom he may not spare from his Person, and they shall so continue for one Year, to see if any Man can duly improve them.

The Interest of the House of *York* growing strong in Country and Parliament, the King thought fit in the Parliament of his thirty first Year to grant Letters Patents to the Duke of *York* to preside in that Parliament. The Lords in Parliament appointed the Duke Protector and Defender of the Realm so long as the same should please the King. During the same Session of Parliament, the King by his Letters Patents appointed the Duke to be his chief Counsellor, Protector and Defender of the Realm, at the King's Will, and unto such time as *Edward* the Prince shall come to the Age of Discretion; the which the said Duke in full Parliament took on him

Cor. Rec.
651, 652,
653.

The Antiquity of National

to perform. Then the King by his Letters Patents created *Edward* his Son Prince of *Wales* and Earl of *Chester*, to him and his Heirs Kings of *England*, with the Ceremonies thereto belonging; the which are confirmed by the Hands of the Lords and by the Commons.

Daniel,
165.

The Duke of *York* and Duke of *Somerset*, the two Contenders for Power, were not to be reconciled; the Duke of *York* stirr'd up the Commons against the Duke of *Somerset*, and then he address'd himself to the Nobility, who very much disliked the over-bearing Power the Duke of *Somerset* assumed over the King and Queen; The Duke of *York* and the Lords of his Party (the King being sick at *Clarendon*,) arrested the Duke of *Somerset* in the Queen's great Chamber, accused him of Treason, and sent him to the Tower; And in the Parliament the Duke of *Somerset* was impeached of Treason: The King, tho' weak, and not very fit for travelling, was brought from *Clarendon* to *London* to dissolve the Parliament; and then the Duke of *Somerset* was set at liberty, and made Captain General of the King's Armies in *France*, who (said his Enemies) had dishonourably, if not treacherously, deliver'd up the strong Towns of *Normandy*, and instead of receiving a condign Punishment for the same, was now intrusted with the Remainder of the *English* In-

Interest in *France*, to lose that too, and undo the whole Commonwealth,

The Duke of *York* and his Partisans were so disgusted at these Proceedings, that he and his Party assembled a great Power, and were marching towards *London*: The King was advised that it was good Policy to prevent the Duke's Approach to *London*, so it was resolv'd to meet him. The King, the Duke of *Somerſet* and other Lords with a great Force met the Duke and his Party at *St. Albans*, and before the Parties came to Blows, the Duke of *York* sent a Letter to the King, full of Proteſtations of Fidelity and Sincerity, offering to give testimony thereof in any thing if his Majesty would please to give due Punishment to the Duke of *Somerſet* and his Adherents that had abused his Favour and dishonour'd the Realm.

The King's Answer to the Duke of *York* was, That he would not deliver up his Friends; which Answer being communicated by *York* to his Friends, they resolv'd to attack the King's Party, which was routed, and *Somerſet* kill'd, and the King took shelter in a poor Cottage, where *York*, *Warwick* and *Salisbury* addressed the King upon their Knees, petitioning his Pardon for what was paſt, for now the common Enemy was ſlain, they had what they aimed at; to which the King answer'd, *Let there be no*

The Antiquity of National

more fighting, and I will do what you would have me.

The Duke of *York* convey'd the King to *London*, all the way paying great deference and respect to him; as soon as they were arrived at *London*, a Parliament was summoned to meet at *Westminster* on the ninth Day of *July*, MDLV, being the thirty third of the King's Reign.

Cotton's
Rec. 657.
658.

In this Parliament, *Richard* Duke of *York*, *Richard* Earl of *Warwick*, and *Richard* Earl of *Salisbury* were declared loyal Subjects, and were included in the general Pardon that passed in this Parliament.

On the twenty first of *November* in the thirty third of the King's Reign, the King by his Letters Patents appointed *Richard* Duke of *York* to preside in the Parliament, which Commision was read before the Lords and then before the Commons.

Then the King by his Letters Patents made the Duke of *York* Protector and Defender of the Realm; which Letters Patents were confirm'd by common Consent of Parliament.

The Queen and her Party met soon after at *Greenwich* to consult in what manner to restore the King to his pristine Liberty and Government, and there it was concluded that the Protector should be commanded to leave off his Place of Protectorship

ship, in respect the King was of Years, and Discretion sufficient, without a Tutor or Guardian, to rule and reign, therefore a Protector's Place was needless: Therefore on the nineteenth of *November* in the thirty fourth Year, the King being present in Parliament, as well by his Letters Patents in the Nature of a Writ, directed to *Richard Duke of York*, as by full Consent of Parliament, repealeth the Power of Protector, Defender, chief Counsellor in this Parliament before committed to the said Duke.

Cot. Rec.
657,658.

Then all was a pieces again; the Duke of *York* and his Party repair to Force, in which they were unsuccessful, and the Duke fled into *Ireland*.

In the thirty eighth of *Henry VI*, a Parliament was summoned to meet on the twentieth Day of *November* at *Coventry*, where *Richard Duke of York* and his Confederates were attainted of Treason, and their Estates forfeited.

In this Parliament it was enacted, That all Letters Patents and Grants of any Office to any Person which was against the King, in the Fields of *St. Albans*, *Blore-beath* or *Ludlow*, shall be void, and that all Grants made by *Richard Duke of York*, or by the Earls of *Salisbury* or *Warwick*, to any Persons being in those Fields against the King, be also void: And that the

Cot. Rec.
664.

The Antiquity of National

Grants made by the King to any Person being with him in those Fields, be and stand good.

Now I proceed to an Act that shows what sort of Parliament this at *Coventry* was. It was there enacted, that all such Knights of any County as were return'd to the Parliament by virtue of the King's Letters, without any other Election, should be good, and that no Sheriff for returning them should incur the Pain therefore provided in the Act of the twenty third of *Henry VI.* And as to the upper House, the Lords of the House of *York*, their Allies and Friends, were in a great measure neglected, few of them had Writs of Summons to that Parliament: The Queen and her Party carried all before them in this Parliament, which from its Works was called *Parliamentum Diabolicum.*

By the Queen's means, *Henry* Duke of *Somerset* (Son of *Edmund* Duke of *Somerset* that was slain in the Battle of *St. Albans*) was made Captain of *Calais*, who going thither to take possession of his new Charge, met with resistance there, and was forced to retire out of the Harbour, the Ordinance from the *Ricebank* playing so continuedly upon him.

This Action at *Calais* so incensed the Queen, that she order'd all the King's Ships lying at *Sandwich* to be furnished and made ready

ready to give assistance to *Somerſet*. The Earl of *Warwick*, with the Assistance of *John Dinham* with his weſtern Fleet, attack'd the King's Ships at *Sandwich* before they were full ready, and took them, and left them to the care of *John Dinham*.

Soon after, the Lord *Cobham* join'd the Earl of *Warwick*, who then being twenty five thouſand ſtrong, they took and plunder'd the Town of *Sandwich*, and then marched into the Weſt, and near *Exeter* were joined by the Earl of *March*.

The King, the Queen, the Dukes of *Somerſet* and *Buckingham*, with a great Army marched towards the Earls of *Warwick* and *March*, and near *Northampton* both Armies came to a battle, in which fell *Humphry* Duke of *Buckingham*, and ſo many of the King's Army, that the Earls obtained a compleat Victory.

After this Action, the Queen, the Duke of *Somerſet* and ſome few others taking with them the young Prince, fled into the Biſhoprick of *Durham*; but they left the King behind them, he being taken priſoner by the Earls, and by them convey'd to *London*; at their coming thither the Tower was yielded to them, and they were kindly receiv'd by the *Londoners*.

The Duke of *York*, having advice of his Friends Succeſs in *England*, left *Ireland*, and haſten'd directly to *London*, where by

Cor. Rec.
665.

the Advice of his Friends he, in the King's Name, summoned a Parliament to meet at *Westminster* on the seventh of *October* in the thirty ninth Year of *Henry VI*, when the King in the Chair of State in the Chamber *de pinct.* attended by Lords and Commons, *George* Bishop of *Exeter* Lord high Chancellor of *England*, made a notable Declaration, taking for his Theme, *Joel 2. Congregate populum, & sanctificate Ecclesiam*: After which, he willed the Commons to choose their *Speaker*, and to present him the next Day to the King.

In this Session of Parliament all the Acts made in the thirty eighth of *Henry VI*, were repealed; all the Acts, Statutes and Ordinances made in that Parliament at *Coventry* were reversed, because that Parliament was unlawfully summoned and holden, and the Knights and Burgeses not duly chosen. The Acts of Parliament at *Coventry* are not in the printed Acts, but are upon the Parliament-Roll to the purport just before mentioned: Few of the expired or repealed Acts of Parliament are printed at large in the Volumes of Statutes, tho' the Titles of most of them are; but the whole Parliament of *Coventry* and all the Transactions there being reversed and repealed, even the Titles of the Acts of that Parliament are left out.

On

On the ninth Day of the Parliament the Duke of *York's* Counsel exhibited to the Lords in full Parliament, a Writing touching the Claim of *Richard* Duke of *York* to the Crown of *England* and Lordship of *Ireland*, the which Lords upon Consultation willed it to be read amongst them, but not to be answered without the King.

The Title derives the Pedigree from *Henry III* to *Edward III*, and from himself upwards to *Edward III*, he claimed as Son and Heir of *Anne* Daughter and Heir of *Roger Mortimer* Earl of *March*, who was Son and Heir of *Philippa* sole Daughter and Heir of *Lionel* Duke of *Clarence* the third Son of *Edward III*, who was elder Brother of *John* of *Gaunt* Duke of *Lancaster*, who was Father of *Henry IV*, Grandfather of *Henry V*, who was Father to him that untruly stiled himself, King *Henry VI*.

The Lords upon large Consultation declared this Title to the King, who willed them to call the Justices, Serjeants and Attorney to answer the same; they being so called, utterly refused to answer the same; and Order was taken that every Lord might therein frankly utter his Conceit, without any Impeachment unto them; in the end there was objected against the Duke's Title as followeth.

*Cotton's
Records,
666.*

First, The Oaths of the Lords made to the King, and namely of the Duke.

Secondly,

The Antiquity of National

Secondly, The Acts of Parliament sundry made against the Title of the Duke.

Thirdly, Sundry Acts of Intail made of the Crown of *England*.

Fourthly, That the Duke pretending Title from *Lionel Duke of Clarence*, should rather bear his Arms, than of *Edmund of Langley Duke of York*.

Fifthly, That at what time as *Henry IV* took upon him the Crown of *England*, he took the same as right Heir to *Henry III*, and not as Conqueror.

State
Tracts,
387.

Note, *Henry IV* derived his Title from *Edmund Crouchback* Earl of *Lancaster* eldest Son of *Henry III*, who was set aside for his Deformity, and *Edward* the younger Brother proclaimed and crowned King by the Stile of *Edward I*.

Note, That the Truth is, that *Edmund* was not called *Crouchback* from any Deformity, but from his wearing the Sign of the Cross upon his Back and Breast, and was in reality younger Brother to *Edward I*.

John of *Gaunt* married *Blanch* the Daughter and Heir of *Henry Duke of Lancaster*: *Henry* the Son of *John* of *Gaunt* and *Blanch*, obtained the Crown and enjoyed it by the Title of *Henry IV*.

From the Digression of these Notes, I return to the Debate of the Lords.

Richard Plantagenet Duke of York, answered the five Objections aforesaid as followeth. To

To the first he answer'd, That no Oath being the Law of Man ought to be performed, when the same tendeth to the Suppression of Truth and Right, which is against the Law of God.

To the second and third, he said he knew of no other Acts than one Act in the first of *Henry IV*, touching a general Tail made by him a Wrong-doer; for if he had any Right to the same, he neither needed, nor would have made any such Intail.

To the fourth, he said, that he justly might have bore the Arms of the Duke of *Clarence* and of *England*, only he forbore the same for a time, as he did his Claim to the Crown.

The fifth being a manifest and approved Untruth, was only a Cloak to shadow the violent Usurpation of *Henry of Derby*, as appears by my aforesaid Notes.

After the Answer of the Duke of *York* to the aforesaid five Objections, the Lords devised this Order, that the King should enjoy the Crown during his Life, and the Duke and his Heirs to succeed after him; and appointed that the Chancellor should declare this to the King.

Whereupon the Duke of *York's* Pedigree and Title was again repeated, and the King assented, that an Accord between them should be made, the which was devised in Form following.

First,

The Antiquity of National

First, That the King during his Life should enjoy the Crown and Preheminance of the Realm of *England*.

Secondly, That the said Duke, the Earl of *March*, and *Edward* Earl of *Rutland* his Sons, should be sworn by no Means to shorten the Days, or impair the Preheminance of the said King during his Life.

Thirdly, that the said Duke shall from thenceforth be reputed, and be instiled the very Heir apparent to the Crown aforesaid, and shall enjoy the same after the Death or Resignation of the said King.

Cor. Recor.
667.

Fourthly, That the said Duke shall have Hereditaments allotted to the clear Value of 10000 Marks, *viz.* for himself 5000 Marks, for the Earl of *March* 3500 Marks, and for the Earl of *Rutland* 1500 Marks.

Fifthly, That the compassing the Death of the said Duke shall be Treason.

Sixthly, That all the Bishops and Lords in full Parliament shall swear to the said Duke and his Heirs in Form aforesaid.

Seventhly, That the said Duke and his two Sons, shall swear to defend the Lords for this Agreement.

The King, by Assent of the Lords, agreeth to all the Ordinances aforesaid, of his free Motion.

The King by the Assent aforesaid, utterly repealeth the said Statute of Intail, made the first of *Henry IV.* so always as hereafter

hereafter there be no better Title proved to defeat this Title and Act.

After all this the said Duke and the two Earls his Sons, came into the Parliament Chamber before the King and Lords, and there promised, and swore to perform the Accord aforesaid with Protestation, if the King for his Part duly observe the same, which the King then promised to do; the which Protestation the Duke and Earls required to be enrolled.

This Session an Act passed for publishing the Duke of *York* to be rightful Heir to the Crown, and Power given him to ride through the whole Kingdom for suppressing all Rebellions and Insurrections, wherein Commandment is given to all Sheriffs Officers and Subjects to obey him as the King, with certain Provisions.

The preceding Matters being settled, the Parliament was dissolved, which was the last Parliament of *Henry VI*, and before I proceed to an Account of the first Parliament of *Edward IV*, it is proper to take in a short History of the Time to connect those two Parliaments.

After the Battle of *Northampton*, the Queen and some of her Friends retreated into the *North* as before-mentioned, and the Duke of *York* in the Plenitude of Power conferred on him (in the Parliament of *Henry VI*.) dispatched ^{*Daniel*} 175. Letters

The Antiquity of National

Letters into *Scotland* in the King's Name; requiring the Queen, the Dukes of *Somerset* and *Exeter*, and all other of the Nobility that were then in that Kingdom, to repair with all Speed to his Presence in *London*; which Command they thought fit to slight, for instead of Compliance, the Queen levied eighteen thousand *English* and *Scots* and marched into *England* to make her own Terms, and not take them from the Duke of *York*, who with his younger Son the Earl of *Rutland*, and the Earl of *Salisbury* (leaving the King in the Custody of the Duke of *Norfolk* and Earl of *Warwick*) marched towards the Queen with a Force much inferior to the Queen's, as his Scouts at *Wakefield* truly informed him; upon which the Earl of *Salisbury* advised the Duke to retire, and wait the coming of the Earl of *March*, his Son, with the *March* Men he was levying; but the Duke being in haste to carry all before him, would not wait for the coming of his Son with his Forces, but engaged the Queen's Army, and was killed in the Engagement, and his Son the Earl of *Rutland*, and his Friend the Earl of *Salisbury* were taken Prisoners, the first stabbed to Death by the Lord *Clifford*, and the other beheaded by the Queen's Order.

Biondi,
173.

The Earl of *March* having Advice of his Father's and Brother's Deaths marched
with

with his Forces from *Shrewsbury*, and hearing that *Jasper* of *Hatfield* half Brother to *Henry VI*, with the Earls of *Ormond* and *Wiltshire*, with great Power of *Welch* and *Irish* were following him, he marched back and gave them Battle near *Mortimer's Cross*, where he put the Earls to flight and killed 3800 of their Men. Notwithstanding this Success of the Earl of *March*, the Queen continued her March towards *London*, having at heart the undoing all the Acts and Ordinances of the last Session of Parliament. Her People marched orderly till they got on the South-side of *Trent*, and then broke out into most exorbitant plundering, according (as 'tis said) by Precontract and Agreement with the Queen.

The Duke of *Norfolk* and Earl of *Warwick* having the King with them, gathered Forces and marched to meet the Queen and prevent her getting to *London*, and near *St. Albans* came to a Battle, wherein the Queen's Forces were victorious, and the Nobles about the King saved themselves by Retreat, and the King by that Action being free'd from his Guardians went to the Queen's Camp. The indifferent People that had the Peace of the Country at heart, more intent upon that than the Interest of the White or Red Rose (which Badges of Distinction began then to be worn)

con-

The Antiquity of National

considered of the best Measures to prevent the Continuance of the Queen's plundering Army: The *Londoners* apprehensive that the City might suffer the same the open Country had, refused to admit the Queen's Army; which the Earl of *Warwick* being advised of, gathered together as many of his scatter'd Troops as he could, and joining with the Earl of *March's* victorious Forces, they made a speedy March to *London*, where they were joyfully received by the *Londoners*.

The Earl of *Warwick* within two Days after his marching into *London*, muster'd all his Army in St. *John's* Fields, and there casting all his Troops into a Ring, he read to them the Agreement made in the last Session of Parliament, and then demanded whether they would have King *Henry* to reign still; who with one Voice cried, no, no; then they were asked whether they would have the Earl of *March*, eldest Son of the Duke of *York* to reign over them, to which they gave an universal Consent. Then certain Officers of *Warwick's* Army, with some leading Men of the Common-Council of *London*, went to the Earl of *March* at *Baynard's* Castle, to acquaint him with what had passed in St. *John's* Fields, who by the Advice and Persuasion of some Bishops and the Earl of *Warwick*, accepted of the Offer of the Crown,

Biondi,
175.

Crown, and next Morning went in Procession to *St. Paul's*, and there offered; and after *Te Deum* sung, he was with great Pomp conveyed to *Westminster*, and being placed in the Royal Seat in the great Hall there, with the Scepter of *St. Edward* in his Hand, it was aloud demanded whether they would have him their King, to which the great Concourse of People there gave a general Consent. Then receiving the Homage of divers Noblemen then present, he was with Procession in great State conveyed to the Abby there, and placed in the Choir as King whilst *Te Deum* was singing; that done, he offered at *St. Edward's Shrine*, and then returned by Water to *St. Paul's*, and was lodged in the Bishop's Palace, and upon the fourth of *March* 1460, he was proclaimed King, by the Name, Stile and Title of *Edward IV.*

Then in an Assembly of Lords Spiritual and Temporal and some of the principal Commoners, it was adjudged and declared, that *Henry VI* having violated his Oath, and broken the Accord made by the Authority of the last Parliament, had made himself unworthy of the Crown, therefore that Council (in which *Edward* was present) deprived him of all regal Honour, Title and Power.

Edward Earl of *March*, Son of *Richard* Duke of *York*, began his Reign on the

The Antiquity of National

fourth Day of *March* 1460, by the Name of *Edward IV*, though *Henry VI* lived twelve Years after.

In his first Parliament holden at *Westminster* the fourth of *November* 1460, a long Declaration was made of his Right to the Crown of *England*, and that *Henry IV*, *V*, *VI*, were Usurpers, and their Heirs disabled by Act of Parliament to enjoy any Inheritance, Estate, or Profits within the Realm of *England* or Dominions of the same for ever, and that *Edward IV* was undoubted King of *England* from the fourth of *March* past, when he was proclaimed King in *Westminster* and *London*: The Queen, the Prince, and many of their Adherents were attainted in this Parliament.

Cont. Recor.
670.

1 Ed. iv. 1.

The Stile of Acts of Parliament received a little Alteration in this Reign, for before, it being by the Advice and Consent of the Lords and at the special Request of the Commons, now was added, by the Authority of the same Parliament, 'The King hath ordained and established, &c.' and with such Addition continued the Stile of Acts of Parliament to *Henry VIII's* time.

Edward IV heard and determined Cases in his Privy-Council that properly lay before the Justices of *nisi prius*, and the Justices of the Benches; he in Council heard
and

and determined the Cause of the Master and poor Brethren of St. *Leonard's* in *York*, upon their Complaint against Sir *Hugh Hastings* and others for withdrawing from them a great Part of their Living, which consisted chiefly of their having a * Thrave of Corn from every Plow-land in the Counties of *York* and *Cumberland*; notwithstanding the Act of Parliament of *Henry VI* directs, that they shall have Actions by Writs or Plaints of Debt or Detinue at their Pleasure. The Country People insulted the Collectors of this Corn-Rent; and being underhand encouraged by the Archbishop of *York*, got together 15000 Men, and marching towards *London* declared for *Henry VI* against *Edward IV*.

2 Hen. 6. 2.

* Twenty four Sheaves, or four Shocks, of 6 Sheaves in each Shock.

Daniel ad. Part, fol. 186.

Richard Duke of Gloucester upon the Death of his Nephew *Edward V*, assumed the Crown and was acknowledged to be right Heir of the House of *York*, and his Right to the Crown of *England* confirmed by Act of Parliament with the Title of *Richard III*.

Cot. Recor. 710.

Richard III tho' a bad Man and stuck at no Wickeness to get the Crown, had the Character of a good King from agreeing with his Parliament, and passing all good Acts that were offered to him. The Acts of Parliament in his Session passed in the same Stile with *Edward IV's* Acts:

Daniel ad. Part, fol. 232, 238.

Rapin N^o.
32. pag.
217, 18.

A great Number of Lords, Knights, Gentlemen and Freeholders in a declaratory Address to the Duke of *Gloucester*, Guardian of *Edward V*, therein bastardise the Children of *Edward IV*, and set aside the Issue of *George Duke of Clarence* by virtue of his Attainder in the seventeenth of *Edward IV*, declare *Richard* younger Brother of the Duke of *Clarence*, right Heir of *Richard Duke of York*, Father of *Edward IV*, and therefore desire *Richard Duke of Gloucester* to accept the Crown of *England*, &c. to which Address a Multitude of the great Men set their Hands, which Roll being laid before the Parliament, *Richard* was declared and elected King by Lords Spiritual and Temporal and Commons assembled in Parliament. *Richard's* Reign was determined in the Battle of *Bosworth-Field* where he was slain.

Sir *William Collingborn* of *Lydiard* in *Wiltshire* was hanged for this Distich.

*The Cat, the Rat, and Lovel the Dog,
Rule all England under a Hog.*

Rapin N^o.
29. pag.
378, 381.

The House of *York* not holding the Crown above twenty four Years; we have no Historian that wrote in that Interval: The Historians that wrote after the Crown came into the House of *Lancaster* in the Person

Person of *Henry VII*, have given an ill Turn to the Actions of the House of *York*, and subsequent Historians follow them, and raise the Character of the House of *Lancaster*, without doing Justice to the House of *York*.

In the Parliament of *Richard III*, is a *Cot. Recor.* long Declaration of that King's right to the 7⁰⁹. Crown, which you may see at large in *Cotton's Records*.

*Jacky of Norfolk be not too bold,
For Dicken thy Master is bought and sold.*

After the Fall of *Richard III* in the Battle of *Bosworth-Field*, *Henry Earl of Richmond* of the House of *Lancaster* assumed the Crown on the twenty second of *August* 1485, by the Title of *Henry VII*, and on the thirtieth of *October* was crowned at *Westminster*, and on the seventh of *November* held a Parliament at *Westminster*, wherein it was established that the Inheritance of the Crown should rest, remain and abide in him, without any mention of the Lady *Elizabeth*, eldest Daughter of *Edward IV*, with whom he was to marry, by precedent Agreement with the Party that brought him in; pursuant to which Agreement on the eighteenth of *January* following he married the Heire's of the House of *York*, by which Marriage the

Lord Bacon, H. 7. 11, 17, 19.

Rapin N°. two Houses of *York* and *Lancaster* were
92. p. 261. united, but the King allowed her no Share
in the Government as the right Heir to the
Daniel 2d. Crown, as she unquestionably was, and ra-
Part, fol. ther neglected the giving her the usual Ce-
254. remonies allowed even to marital Queens,

Henry VII being descended from a Bastard, Son of *John* of *Gaunt* Duke of *Lancaster* fourth Son of *Edward III*, had no other Title to the Crown but the Legitimation of *John* of *Gaunt*'s four Children that he had by *Katherine Swinford* before marriage; *John* their Son was created Earl of *Somerset*, who being born at *Beaufort* in *France*, took the Surname of *Beaufort*; and this *John*, with his two Brothers and a Sister, were in the the twentieth of *Richard II* by Act of Parliament, in Form of a Charter, legitimated. *John Beaufort* Duke of *Somerset*, Son of *John* Earl of *Somerset*, left *Margaret* his Daughter and Heir, who married *Edmund* of *Haddam* Earl of *Richmond*, who was Father of *Henry VII*.

The Act that legitimated *Katherine Swinford*'s Children, made them capable of all manner of Honours and Dignities (*excepta dignitate Regali*) from which Words of the Charter, *Henry VII* could not claim the Crown as a Descendant from that Branch of the House of *Lancaster* that was legitimated by *Richard II*, the very Act of Parliament, that legitimated and qualified them
for

for all other Dignities, expressly excepting the Royal one.

Tho' by the Sword he had conquered *Richard III*, yet he wisely declined claiming the Crown by the Right of Conquest, tho' it appears he had that much at Heart, but being in possession of the Crown, chose to be recognized by Act of Parliament, which (by the Influence he had upon the Members) was drawn up according to his Mind: The Act was drawn up in ambiguous Terms, declaratory of a precedent Right, and without any Appearance of creating a new Right, he suffered not the Lady *Elizabeth*, the Heiress of the House of *York* to be so much as named in the Act; but then to take off all Umbrage from the Friends to the House of *York*, he caused the Intail of the Crown to extend no farther than to the Heirs of his Body and not mentioning his right Heirs, leaving that to future Decisions of the Law; so as the Intail might seem rather a personal Favour to him and his Children, than a total Disinheritance of the House of *York*.

During the Debate about the Act of Intail, it was advanced, that several of the Members of Parliament were under Attainders, therefore it was ordered that such Members should forbear coming to the House till their Attainders were reversed by Act of Parliament, and such was the

1 Heb. vii. Judges Opinion, after Consultation by Order in the Exchequer Chamber.

4.

It was then moved amongst the Judges in their Consultation, what should be done for the King himself, who was likewise under Attainder; in that Case it was unanimously resolved, that the Crown takes away all Defects and Stops in Blood; and that from the time the King did assume the Crown, the Fountain was cleared, and all Attainders and corruption of Blood discharged: But nevertheless for Honour's sake it was ordained by Parliament, that all Records, where there was any memory or mention of the King's Attainder, should be defaced, cancelled, and taken off the File.

After the King's Honour and his Friends Safety were provided for; the Adherents to King *Richard* were brought upon the Carpet, the Duke of *Norfolk*, the Earl of *Surry*, Viscount *Lovel*, the Lord *Ferrars*, the Lord *Zouch*, *Richard Ratcliff*, *William Catesby*, and many other Persons of Degree and Quality were by Parliament attainted of High-Treason.

Then the Adherents to King *Richard* that were of lower Degree were taken into Consideration; they were to be pardoned, and the King to take the Grace solely to himself, would not have a parliamentary Pardon, but during the Session of Parliament published his Royal Proclamation, offering

offering Pardon and Grace of Restitution, to all such as had taken Arms against him, provided they submitted to his Mercy, and took the Oath of Allegiance and Fidelity to him by the Day prefix'd.

So much noble Blood being spilt in the Field and on the Scaffold, during the Wars between the two Houses of *York* and *Lancaster*, this King thought fit to provide a Remedy to prevent such Misfortunes in future Times.

Therefore in the eleventh Year of his Reign, an Act of Parliament passed, that no Person that attended upon the King and sovereign Lord of this Land, for the time being, in his Wars or otherwise, shall in no wise be convict or attainted of Treason by Act of Parliament or otherwise, by any Process of Law whereby they may lose Life or forfeit Estate: And this Act is very just, for if every Subject by the Duty of his Allegiance is bound to serve and assist his sovereign Lord, it is not reasonable he should be punished for the same, private Subjects are not Judges of the Rights of Princes, therefore must obey the King for the time being.

In *September* following the Queen was brought to bed of a Son, and in him center'd the two Houses of *York* and *Lancaster*; but still the King's Aversion to the House of *York* was so predominant, that
he

The Antiquity of National

he shewed little Respect to the Queen and none to her House, which alienated the Hearts of his Subjects from him daily more and more, the generality of the Nation being well affected to the House of *York*, where was the inherent Right to the Crown.

Rapin N°. 32. p. 288. The cunning King sensible of Danger from the Resentment of the House of *York*, N°. 33. p. 299. ordered Preparations to be made for the Coronation of his Queen, which was performed with great Solemnity on the twenty fifth of *November*, near two Years after she was married and above a Year after she had brought the Nation and him a Son and Heir.

The Stile of Acts of Parliament in *Henry VII's* time, is by the Assent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by Authority of the said Parliament, the King hath done to be made the Statutes following: In the seventh of his Reign he asked Advice of his Parliament about the War intended against *France*.

Bacon's
Hen. vii.
pag. 95.

Henry VII a thinking suspicious Prince, reflecting upon the over Balance the Nobility had been to former Kings, cast about him to lessen the Power of the Lords, and enlarge that of the Commons, and truly judging that Power accompanied Property; in order to lessen the Power of the Lords, he set very low Fines for License of alienation

1*Ed.* 3. 12.

nation of Lands holden *in Capite*, which in time lessened the Power of the Lords and raised the Commons, whose Power grew as their Property increased.

Power was always attendant on Property, whilst the King, the Church, and the Barons had above two Thirds of the Lands of *England* in Demean, and under Tenure Rents and Services to be paid and performed to the King, Lords Spiritual and Temporal; then the great Power of the Nation was in the King and Lords.

But after *Henry VII* made Alienation easy, and *Henry VIII* by Act of Parliament made it lawful to alienate Socage-Lands by Will or Deed, and two Parts of three of Lands holden in Knight-Service; and at the Dissolution of Monasteries great Part of their Lands falling into the Hands of the Commons, the Balance of Power fell into them, which was before the middle of *Henry VII* to a great over Balance in the King, Lords Spiritual and Temporal.

Bacon's Hen. vii. pag. 100. 32. Hen. viii. 1. 34 Hen. viii. 5. Tyrrel, xxxvii.

From this time the Power of the Commons grew apace, they took upon themselves to punish their own Members for Absence from Parliament, as an Offence against their House, whereas before the Punishment was inflicted in the *King's-Bench* as an Offence against the King, as Disobedience to the King's Command in his Writ of Summons.

Before

The Antiquity of National

Before I enter upon the ancient Manner of punishing the Commons for their Absence from Parliament, I shall first shew how it was with the Barons in that Case, before the Statute of *Richard II*, in which Statute the Punishment is by way of Amercement, and by whom the Amercement was to be set, and in what Quantity is to be my Essay.

Magna Charta is not a Charter of new Law, but declaratory of the old Laws and Customs of the Realm, therein is declared, what has been, and ought to be the Rule in Amercements, That Earls and Barons shall not be amerced but by their Peers.

Before any Act of Parliament was made for the Punishment of Members of Parliament for their Neglect of Obedience to the King's Writ that positively commanded their Appearance there, Informations were exhibited in the King's Bench, and the Offenders there amerced.

*Selden's
Baronage
in Parl.
170.*

In Cases of Amercements of Barons of Parliament upon Non-suits or other Judgments ending in *misericordia*, there anciently was a special Course, both for the Sum and the Manner of ascertaining of it, which differ'd from the Course of amercing Commoners.

The Sum of an Earl, or Spiritual, or Temporal Baron was the same, *viz.* five Pounds, and the Setting of it was by the King's

King's Justices, before whom the Action depended: The Justices in that Case supplying the Place of Peers: The Justices could give Judgment that the Peer was to be amerced, but in the *quantum*. they were limited by the Privilege and Custom of the Peerage, which was five Pounds for every Lord of Parliament as aforesaid.

In *Edward III's* time the Bishop of *Winchester* had an Information exhibited against him in the *King's-Bench* for absenting himself from Parliament without the King's License, and he pleaded to the Jurisdiction of the Court, as before-mentioned in Page 283.

Having explained the Manner of amercing Peers in general, and the Measure of their Amercement, I proceed to the Manner of punishing both Lords and Commons for Absence from Parliament, as enacted in *Richard II's* time, when the first Act was made for punishing Absence from Parliament, and therein by way of Amercement.

To save the Reader the Trouble of having Recourse to the Act of Parliament, I transcribe the enacting Clause of the Statute of *Richard II.*

‘ If any Person of the Realm have Summons to Parliament (be he Archbishop, Bishop, Abbot, Prior, Duke, Earl, Baron, Banneret, Knight of the Shire, Citizen of City, Burgeſs of Borough, or other Person
 ‘ or

Rich. ii.
cap. 4.

‘ or Commonalty) do absent himself, and
 ‘ come not at the said Summons (except he
 ‘ may reasonably and honestly excuse him to
 ‘ our Lord the King) he shall be amerced,
 ‘ or otherwise punished, according as of old
 ‘ times hath been used to be done within the
 ‘ said Realm in the said Case.’

From these last Words of the Statute, it appears that Peers were amerced for Absence from Parliament in times before that Statute was made: The Privilege of the Peerage was always great, and confirmed by *Magna Charta*, and as to the Subject I am now upon, Peers were to be amerced, but by none but their Peers. That is the Measure or Quantity of the Amercement of a Baron was to be affected by his Peers.

When the King by his Attorney exhibited an Information in the *King's-Bench* against a Peer of Parliament, for neglecting to appear in Parliament, the matter of Fact was there tried, and whether it was such a Disobedience to the King's Command in his Writ of Summons, for which the Peer was to be amerced; if the Justices of the Bench gave Judgment that the Peer was to be amerced, then by the Privilege of Peerage the Quantity of the Amercement was to be affected by the Peers.

As the Amercement of a Commoner is to be affected by his Peers, it's the Judges Part before whom the Action depends, to
 give

give Judgment, whether the Baron or the Commoner is by Law to be amerced, and if they are to be amerced, that Amercement is to be ascertained, as to Quantity, by the Baron's Peers, and the Commoner by his Peers.

In *Edward II's* time a Writ was directed to the Justices of the Common-Pleas, that they should not amerce the Abbot of *Crowland*, *tanquam Baro*, because he did not hold *per Baroniam, aut partem Baronie*.

Selden's Barouage in Parl. 171. Claus. 15 E. II. n. 12.

From this Record it appears, that the Justices of the Benches before the Statute of *Richard II*, did adjudge Barons to be amerced, otherwise there would have been no Occasion to command the Justices not to amerce the Abbot as a Baron.

It is a Maxim in Law, that the King may sue and prosecute in what Court he pleases. If, pursuant to the Statute of *Richard II*, the King prosecute a Peer in the High Court of Parliament for his Absence from Parliament without the King's Licence, he shall be there amerced; and if the King prosecutes in one Bench or the other, the Justices adjudged the Baron to be amerced, but the Quantity of the Amercement was not assess'd by the Justices but by the Peers.

The Amercement of a Baron was five Pounds as aforesaid, and to that Measure affirmed by the Statutes of *Ireland* in *Henry*

Selden's Barou. of Parl. 171.

Henry VI's time, that a Lord of Parliament in all Cases as well personal as real, in which Amercements do lie, shall be amerced at a hundred *Solid*.

Rot. Parl.

31. *H. VI.*

N^o. 45.

Stat. 31.

H. VI. c. 2.

In the thirty first of *Henry VI*, a certain Fine was specially taxed in Parliament upon every Lord for not coming to Parliament according to their Degree. The fining a Lord of Parliament according to his Degree in the Parliament of *Henry VI*, hath relation to the superior Title of Honour created by *Edward III*, who first gave the Title of Duke ; for whereas the Amercement of an Earl or Baron was before five Pounds, the new Superior Title of Duke was according to the proportion of the Reliefs, double to that of an Earl.

The Limitation of the *quantum* of an Amercement of a Peer is a Rule and Stint to the Benches, but none to the supreme Court, the House of Lords.

Now I proceed to the Manner and Measure of punishing Members of the House of Commons that presumed to absent themselves from Parliament without the King's Licence.

Before the Statute of *Richard II*, Members of the House of Commons were prosecuted and punished for Absence from Parliament, as appears by the Words of the said Statute, *viz. That they shall be amerced or otherwise punished according as of old times bath*

both been used to be done. And that ancient Usage, referr'd to by the said Act, was by Information in the Bench, where Informations were exhibited against them for Disobedience to the King's Command, in his Writ of Summons; and there according to ancient Usage they were adjudged to be amerced, and as a *Misericordia*, the Amercement was assessed and assessed, by a Jury of Commoners their Peers, and this ancient Usage and Proceeding is affirmed and established by the Statute of *Richard II*, and so continued the Proceeding in the Case till *Henry VII*'s time.

And the Commons never took upon themselves to punish their own Members for Absence from Parliament till the middle of *Henry VII*, when their Power, then in Infancy, began to grow. Before that time, such Members as had occasion to be absent, petitioned the King for his Licence; but since that time, the House of Commons have taken upon themselves the Punishment of their own Members for Absence; and in the sixth of *Henry VIII*, obtain'd an Act of Parliament, that no Member of the House of Commons should depart from the House before the End of the Session of Parliament without Licence first obtain'd from the Speaker and Commons, and that enter'd of Record in the Book of the Clerk of the Parliament.

Parl. El.
120.
4 H. VIII.
8.
6 H. VIII.
16.

The Antiquity of National

And then all ancient Prosecution in the case ceas'd. Petitions were not presented to the House of Commons till the middle of *Henry VII's* time, and then though the Petition was in the Title to the Commons, yet the Prayers in the Petitions were turned to the King and not to the Commons; as for instance, the Petition of the Upholsters:

11 H. VII. *To the right worshipful the Commons in this*
19. *present Parliament assembled, &c. Therefore it may please the King's Highness, by the Advice of the Lords Spiritual and Temporal, and his Commons in this Parliament assembled and by Authority of the same, to establish and enact, &c.*

Lord Bacon's, H. VII. 214. *Henry VII, through the whole course of his Reign, took the advice of Parliament in all great Affairs, whether military or civil; in his consummate Wisdom he judged it safest to assist martial Law, with the Law and Authority of Parliament, as appears by several Statutes made in the nineteenth of his Reign.*

It was formerly counted to be a fundamental Error in our Parliamentary Constitution, that the Citizens and Burgessees of the House of Commons so much outnumber the Knights of Shires who represent the landed Interest, which was so enlarged in *Henry VII* and *Henry VIII's* time, as for the Commons to overbalance in Property both King, Church, and Lords. The greatest part

part of the Citizens and Burgeſſes, before *Henry VII's* time, were eſteemed very good Members of the Commons, if they were ſo ſagacious as to move ſomething in the Houſe that might tend to the Advancement of the Trade of the City or Borough they repreſented, as the maritime Boroughs, Shipping, Navigation and foreign Commerce; the *Suffolk* Boroughs, the Intereſt of the clothing Trade; the Citizens of *Norwich*, that of worſted Stuffs; the *Corniſh* Boroughs, that of the Stanneries, and it was not look'd upon as any part of their Buſineſs in Parliament to ſearch into the *Arcana Imperii*, that being in all ancient times, and ſo late as *Henry VII's* time, looked upon to be the Province of the King and Lords, for at that time Citizens and Burgeſſes were reſident of Cities and Boroughs, and not Country Gentlemen of great landed Intereſt.

In *Henry VII's* time, and *Henry VIII's*, Miniſters of State, Officers of the Revenue and other Courtiers found an account in creeping through Boroughs into the Houſe of Commons, and to make room for them, the Boroughs from 126 (the Number in the latter end of *Henry VIII's* time) is near doubled by reviving dormant Rights and Privileges claim'd by ancient Boroughs, after they had been obſolete for ſome Centuries. Of late Days very few Merchants or Tradefmen are choſen in the Boroughs of

The Antiquity of National

their Residence; Courtiers, Country Gentlemen and overgrown *Londoners* engross most of the Boroughs.

Henry VIII succeeded his Father who died the twenty second of *April* 1509. This Reign affords great Variety in parliamentary Proceedings; the King stretch'd his Prerogative to a high pitch, obtained from his Parliaments what he pleased, hector'd or cajol'd them according as he found best to his purpose.

The Stile in the Preface to Acts of Parliament was the same with *Henry VII*, viz. by the Assent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by Authority of the same, and also in the enacting Clause in the Body of the Acts.

The King would not bear any Refusal from his Parliaments, and on the other side, passed a great many Acts of Parliament for the Benefit of the Nation.

The Houses of *York* and *Lancaster* were cemented in his Father and Mother, and firmly united in him, the Heir of both Houses, whose Spirit was equal to his Birth: He, at his first Accession to the Throne, entertained Thoughts of regaining what his Predecessors had lost in *France*, during the domestick Contests between the White and Red Roses, and began his Reign with a popular Appearance of Justice, in committing

Empson and *Dudley* to the Tower for their Extortions in his Father's time; and their inferior Officers and Tools he caused to be committed to several Prisons, and being convicted by legal Trials, caused Restitution to be made to many Persons they had extorted great Sums from, and delivered them up to the Parliament, where they were attainted and afterwards executed, to the great Satisfaction of the Nation.

^{4 Hen. 8,}
^{12, 15.}
^{4 Inst. 197.}

Henry VIII farther to ingratiate himself with his Parliament, Courtiers and People, with that monstrous Mass of Treasure his Father left, reckoned at 1,800,000, *l.* was bountiful to all about him, and the most magnificent in his Expences of any Prince in *Europe*.

In the Year 1522, *Henry VIII* having without any just Cause proclaimed War against *France*, durst not call a Parliament in order to demand a Subsidy; so Cardinal *Wolsey*, who had engaged his Master in the War to serve some private Ends of his own, must contrive ways to raise Money; instantly Orders were sent to all the Sheriffs, to return a List of the Names of all above sixteen Years old, with an exact Account of what each Person was worth in Land, Stock, Moveables and Money; this was followed by a general Loan of the Tenth of the Laity and a Fourth of the Clergy. This Loan made a great Noise through the

The Antiquity of National

whole Kingdom, all exclaimed openly against the Cardinal, who was the Contriver of it; but he little regarded the Peoples Clamours, being satisfied the King would support him. This extraordinary Method of raising Money was so disagreeable to the People of *England*, that the King wanting Money the next Year, judged it better to proceed in the usual way, and summoned a Parliament to be held on the fifteenth of *April 1523* at *London*, and a Convocation meeting at the same time according to Custom, the Cardinal by his legantine Power, what with Threats and fine Promises, obtained of the Clergy a Subsidy of one half of their Revenues payable in five Years.

The Cardinal having done his Business with the Clergy, went to the House of Commons and there made a long Speech, endeavouring to shew the Necessity of the War the King had undertaken against the King of *France*, concluding with a Demand of a Subsidy of the fifth Part of the Goods of every Lay Subject, to be paid in four Years. This Demand caused great and warm Debates in the House of Commons; however, with the Interest he had made there by Places, Pensions, and Promises, half the Sum demanded was granted. The Cardinal who was used to carry all before him, highly offended with
the

the half-doings of the Commons, went again to the House, and desired to know what they had to say against the Subsidy demanded, that he might convince them of the Necessity of the whole; but the Commons, like true *English* Patriots, replied by the Mouth of their Speaker, *That it was the Order of that House to hear, and not to debate, but amongst themselves.* This Reply of the Commons extremely mortified the Cardinal, plainly convincing him that tho' he had got so many Courtiers into the House, his Authority was not of such Weight there, as it was in the House of Convocation.

Rapin N°. 37. P. 234, 245. Stowe Howse, 519.

Notwithstanding the Clamours of the People upon the Cardinal for the Loan he contrived in the Year 1522, the King wanting Money in 1525 to carry on his War in *France*, committed the Manner of raising Money to the Care and Art of the Cardinal, who from the Repulse he met with in the House of Commons in 1523, was too haughty to run the Hazard of a Refusal from the House of Commons, resolved on a more arbitrary and speedy Method of raising Money, and issued out Orders in the King's Name, to levy throughout the Kingdom the sixth Part of every Layman's Goods, and the fourth of the Clergy's. These Orders were no sooner published but the Nation was in a great

G 4

Ferment,

The Antiquity of National

Ferment, exclaiming against this Method of raising Money as a manifest Breach of *Magna Charta*. The King being informed of the Peoples Grievance, forthwith issued out a Proclamation, disowning the Commissions which had been published in his Name, declaring he would exact nothing of his People by Force, nor demand any thing but by way of Benevolence as had been practised in the Reign of *Edward IV*, and soon after demanded a Benevolence in Quantity little less than that which was authoritatively required, the *Londoners* being first taxed excused themselves, on Account that Benevolences were abolished by *Richard III* by Act of Parliament.

The Cardinal closeted the leading Men of the Common Council one by one, and according to his wonted Practice used Threats or Promises, suitably applied to the Dispositions of the Persons, being bent at any Rate to serve his Master rather than to apply to Parliament. But even under that King and insolent haughty Minister, the Pill would not be swallowed, an Insurrection was raised and timely suppressed before it spread too far: Some of the Principals of the Rising were imprisoned and no farther punished; the King finding how the Nation stood affected, thought fit to shew he had no hand in the violent Proceedings of his prime Minister,

nister. And the Prisoners being called before the Council were severally reprimanded by the Cardinal, but the King offered them to discharge them all and grant them his Pardon, provided they would find Sureties for their good Behaviour for the future, which they being not able to do, the Cardinal and Duke of *Norfolk* offered to be their Sureties, and so they were discharged. I have given a short Account of this Affair, to shew that even this great King and this insolent Minister could not raise Subsidies without Concurrence of Parliament.

Rapin N° 37. P. 297.

So the Cardinal projected to rob *Peter* to pay *Paul*.

Cardinal *Wolfey* knowing the King's Inclination to give Encouragement to Learning, projected founding two Colleges one at *Oxford* and another at *Ipswich*, and having the King's Countenance and Approbation therein applied to the Pope for his Bull to dissolve some small Monasteries to endow his Colleges; the Cardinal as a Pope of another World, had such an Influence at *Rome* as to obtain his End, and the King's Assent to the Pope's Bull in *April* 1524, and in the Year 1528, the King and Cardinal obtained a Bull from the Pope to suppress more Monasteries, and erect new Bishopricks, turning some Abbies into Cathedrals.

This

This Compliance of the Pope to dissolve some Monasteries for the good Works of founding Colleges and Bishopricks, was a good handle to the King to dissolve all; he caused the Monasteries to be visited, where Vice and Immorality enough was found (particularly in the small ones, with which the King intended to begin) to subject them to Censure and Punishment.

The Way being thus planed, the King ordered the Report of the Visitors to be read in Parliament, which represented the Manners of the Monks so odious, that the King's Ministers let not slip that Opportunity to move, that a Bill might be brought in to dissolve such Monasteries as had not above two hundred Pounds a Year in Lands. The Bill stuck in the House of Commons so long, that the King became impatient to have it finished, which his Ministers in the House could not get through; whereupon the King took upon himself the expediting his Bill, and sent for the Members of the House of Commons to attend him in his Gallery, where the King went thro' them with a stern Countenance, without speaking a Word to any of them; so the Members having not received the King's Commands to depart to their House, durst not return till they had the King's Pleasure, who went a hunting, and the Commons all that while attending in the Gallery,
at

at his Return he went through them and with a Fierceness peculiar to himself, told them if his Bill did not pass it would cost many of their Heads.

This Bill was to answer the King's Occasions instead of Subsidies, for it gave all the Lands of the small Monasteries to the King together with the Jewels, Plate, and other rich Moveables.

During the time the King was hunting, the Ministers made use of that time to set in the most glaring Light the Danger some known Opponents to the King's Bill might be in; and to leave no Expedient unattempted, the King's magnificent and bountiful Temper they brought in Aid of their other persuasive Arguments, insinuating that very sensible one of the Advantage many of them might reap, by Grants or easy Purchases of the King, of the Lands of the dissolved Monasteries; so what with Fear and what with Hope, the King's Bill (as he called it) passed. *Dugd. Bar.*
Pref. 6.
27 Hen. 8.
28.

Some of the little Monasteries being resigned into the King's Hands before the general Act of Dissolution passed, a Court of Augmentations was erected by Act of Parliament. *27 Hen. 8.*
27.

The Commons by complying with the King in passing such Acts as his Ministers moved for, had so much the King's Favour that

The Antiquity of National

that they obtained greater Privileges than that House ever had or claimed before.

Before this King's time it was several times agreed by all the Judges and observed as the Law, that the Person of a Member of the Commons House and his Servants only, were exempted from Arrests and Outlawries, but might be impleaded, sued and attached by Lands and Goods, but in this King's time they began to be Judges of their own Privileges, condemning and imprisoning their Fellow Subjects at their Pleasure.

In this King's time Parliaments began to continue longer than in former times, to be kept on by many Prorogations, that Prince well knowing that long Parliaments, that had partaken of his Bounty, were fittest for the great Changes he had in View.

Parl. Sum. The Parliament summoned to meet on the third of *November*, in the twenty first Year of *Henry VIII*, was continued by several Adjournments and Prorogations till a new Parliament was called the eighth Day of *June* in the twenty eighth of *Henry VIII*, and that continued by Adjournments and Prorogations till a new Parliament was summoned to meet on the twenty eighth of *April* in the thirty first of *Henry VIII*, and in like Manner he continued Parliaments to the end of his Reign, and saved the Trouble and Charge of modelling new Parliaments every Year: King and Commons

mons curried one another, the King got such Acts passed as he liked, and in Return the King allowed them to extend their Privileges beyond former Lengths.

In the thirty fourth of *Henry VIII*, *George Ferrers*, Esq; Burgess for *Plymouth*, was arrested and put into the Counter; the House being informed of it, and that the Commitment was for Debt by Order of the Judges of the *King's-Bench*, sent their Serjeant thither to demand their Member; in pursuance of his Orders he met with Resistance, the top of his Mace was broken off, his Man knocked down, and he glad to escape without *Ferrers*, who he had Orders to bring to the House: The House of Commons so highly resented the ill Treatment their Serjeant had met with, that they would sit no longer without their Member, and desiring a Conference with the Lords; Sir *Thomas Audley*, Lord Keeper and the Lords judged the Contempt to be very great, and referred the Punishment thereof to the House of Commons it self, by whose Order, *Thomas Moyle*, Esq; Speaker, sent his Warrant to bring before the House the Sheriff of *London* that was concerned, the Clerks of the Counter, Officers, &c. and some were committed to the Tower, others to *Newgate*, where they continued till they were discharged on the Petition of the Lord Mayor: From this
time

time the Power and Privilege of the House of Commons took a progressive Increase; and this Precedent was gained by the King's want of an Aid, who at that time expected the Commons would voluntarily offer him a Subsidy; the Ministry in the House of Lords knowing the King's Will, gave the Commons the Compliment to punish those that imprisoned one of their Members; it was said by *Dyer* that if a Man be condemned in Debt or Trespafs and is chosen one of the Burgesses or Knights of Parliament, and afterwards is taken in Execution, he cannot have the Privilege of Parliament; and so it was held by the Sages of the Law in the Case of *Ferrers* in Henry VIII's time: Altho' at that time the Privilege was allowed him, yet it was unjust.

Lex Parliamentaria,
263.

4 Inst. 44.

At the Dissolution of the Abbies it was advanced in Parliament by the Courtiers, that the Revenues of them should be employed to the Use of the State, for the Ease of the Subject, who for the future should not be charged with Subsidies, Fifteenths, Loans or other common Aids: Notwithstanding this plausible Project, in the very Year that the rich Priory of St. *John's* of *Jerusalem* was given to the King, he demanded and had a Subsidy of the Clergy and Laity, and so he had in the thirty fourth and thirty seventh of his Reign.

Henry

Henry VIII, one of the most despotick of our Princes, attempted no Limitation of the Succession of the Crown by Authority of his Prerogative solely, but in the great Variety made therein during his Reign, Parliament Concurrence was always had; he had so well trained his long Parliaments, that they always gave into his Will and Pleasure.

When *Henry VIII* was tired of Queen *Katherine*, he obtained an Act of Parliament to dissolve that Marriage and set aside his Daughter *Mary* whom that Queen bore to him, and to limit the Succession to his Issue by *Anne Boleyn* his second Wife, who bore him *Elizabeth* his second Daughter.

Then he obtained an Act of Parliament to illegitimate both his Daughters *Mary* and *Elizabeth*, and to settle the Crown upon his Issue by Queen * *Jane*, and for want of such Issue, to empower the King to name and appoint a Successor by his Letters Patents, or by his last Will and Testament.

Then by another Act of Parliament in Case his Son *Edward*, which he had by Queen *Jane*, should die without Issue, and the King should have none by Queen * *Katherine*, then the Crown was to go to the Lady *Mary*, with Condition however, that she observe such Limitations or Conditions as shall be declared by the King's Letters

²⁵ Hen. 8.

^{22.}

²⁶ Hen. 8.

^{2.}

²⁸ Hen. 8.

^{7.}

* *Seymore.*

MS. Parl. cap. 6.

³⁵ Hen. 8.

^{1.}

* *Parr.*

Burnet Ref. 329.

Letters Patents under his great Seal or by his last Will, and in default of Issue of Lady *Mary*, the Crown was to go to the Lady *Elizabeth* under the same Limitations or Conditions, and in Default of Issue by the Lady *Elizabeth* or not complying with the King's Limitations or Conditions, then the Crown should go to any other that shall be declared by the King's Letters Patents or by his Will; here were his Daughters illegitimated by one Act, restored by another under Conditions; so did King *Henry*'s Parliaments enact what he pleased, and remarkable it is, that in all the Limitations of the Succession of the Crown; that upon Failure of Issue of the King's Children, no Care was taken or Provision therein made for *Margaret* his Sister, married to *James IV* of *Scotland*. And the King in the Will he made in the last Year of his Reign, passed over in silence the Heirs of his eldest Sister *Margaret*, and preferred the Issue of his younger Sister *Mary*, first married to *Lewis XII* of *France*, by whom she had no Issue, and after his Death married to *Charles Brandon* Duke of *Suffolk*, who had by her two Daughters, *Frances* the eldest, married to *Henry Grey* Duke of *Suffolk*, and *Eleanor* to *Henry* Lord *Clifford* Earl of *Cumberland*.

Burnet's
Refor. 349.

Dugd. Bar.
vol. 2. 300.

Thus did *Henry* dance the Limitation and Succession of the Crown backward and

and forward, and out of all common way, just as he pleased; and all backed with a parliamentary Sanction. He and his Parliaments, though Papiſts, took away from the Pope firſt Fruits and Tenths; declared by Act of Parliament the King ſupreme Head of the Church of *England*; reverſed and made void all the Pope's Bulls, Breves, Faculties and Diſpenſations, and that any Perſons that ſued for or obtained them for the future from the Pope, ſhould incur the Pains contained in the Statute of Proviſion and Premunire of *Richard II*, and inſtead of the Pope authorized the Archbiſhop of *Canterbury* to grant Faculties, Diſpenſations, &c. but to be confirmed by the King's great Seal; ſo inſtead of one Pope, this Act of Parliament conſtituted two in *England*, viz. the King and Archbiſhop of *Canterbury*.

25 Hen. 3, 20.
 26 Hen. 3, 1.
 28 Hen. 3, 16.
 27 Ed. 3, 1.
 3 Rich. 2, cap. 3.
 7 Rich. 2, 12.

This King one way or other made his Parliaments ſo ductile, that he ſeldom wanted their Aſſent and Confirmation to any thing he or his Miniſtry offered them, thereby keeping up the Form of Proceedings in Parliament according to the old *Engliſh* Conſtitution; as *Auguſtus* by keeping up the ancient Form of Proceeding in the Senate, rivetted himſelf in Monarchy and ſuppreſſed the Commonwealth of *Rome*.

Tacitus, vol. 1. p. 71

Henry VIII was not only highly magnificent in his Expences but moſt exorbitantly profuſe; the immense Treafure his Fa-

ther left him was soon squandered, the vast Riches he got from the Monasteries and Sale of their Lands, went the same way, besides his frequent Calls upon his Parliaments for Subsidies, which were mostly complied with, by keeping his Parliaments long, the Members found by comfortable Experience, that they gave to receive. And indeed the Subsidies and Taxes granted by long Parliaments look more like the Gifts of the Representatives, than of the People they represent; anciently Parliaments continued rarely above one Session as appears by the Summons to Parliament before *Henry VIII's* time, and when that King found it answerable to his Views to have a long Acquaintance with the Representatives of the Commons; they also found a sensible Convenience in their Service, and upon Summons of a new Parliament spared no Expence to be new elected, to whom may be applied the old *English* Proverb, *That Man that buys dear, can't live by selling cheap.*

Parl. Sum.
Passim.

Free Election is the Life and Soul of our parliamentary Constitution, which frequent Election of new Parliaments will restore to ancient Usage.

34 *Hen. 8.*
26.

An Act was obtained to impower the King to dissolve old Boroughs in *Wales* and make new ones where he pleased for seven Years, and the Parliament put the Power of Legislature into his Hands, enacting that

that the King might make Laws and Ordinances for the Government of *Wales* at his Majesty's Pleasure, but this latter Clause was repealed in King *James's* time. 21 Jac. 16.

King *Henry VIII* obtained an Act of Parliament to confirm his Marriage with Queen *Anne Boleyn*, and to declare such Person Traitor that should write or speak against the Validity of that Match, and having also obtained Subsidies and whatsoever else he pleased from his Parliaments; to obtain his Ends and please, such as inclined to a Reformation and such as were for continuing in the old way, the King steered a middle Course in religious Matters, in which Situation both Parties thought he could not continue long, therefore both Parties vied with each other in Compliance with the King's Inclinations, striving which should be forwardest in answering all his Demands, that he being pleased with their Actions in Parliament, might be the more indulgent to their Principles: The Friends of the old Religion, seeing such Beginnings, were afraid of his going greater Lengths, and that their Opposition or Non-compliance with his Will, might make him go farther and finish the Work begun, so both Parties striving to get that towering Prince's Favour, gave him an Authority much greater than any of his Predecessors ever could obtain, and which he would not have been able to usurp in any

25 Hen. 84
cap. 22.

26 Hen. 84
2.

other Circumstances, without endangering his Crown; but both Parties were deceived, the King kept on in the same Course to his Death, and made them both feel the sad Effects of their Compliances, by setting up an arbitrary Power that they had so easily let him assume, which ought to be a Caution to the national Trustees not to give in, upon any Views to such Attempts of the King or Ministry as may destroy the ancient Rights and Privileges of the People. And this complying Parliament after the King had continued it six Years, after it had complied in dissolving the little Monasteries and to all the King's Pleasure, he dissolved, to let them go home and reflect upon their own Weakness.

27 Hen. 8.
28.

Reforma-
tion, vol.
1. p. 258.

Many Abbots and Priors surrendered their Houses and Lands by way of Agreement between them and the King, for Causes specified in the Deed it self, Dr. *Burnet* gives the Form most generally made use of, viz. 'The Abbot and Brethren upon full Deliberation, certain Knowledge of their own proper Motion, for certain just and reasonable Causes specially moving them in their Souls and Consciences, did freely and of their own accord give and grant their Houses to the King.'

31 H. viii.

Within four Years after the Dissolution of the little Monasteries, the rest were by Act of Parliament vested in the King, both Lords and Commons having before tasted the Sweet

Sweet of the little Monasteries made an Oblation of the great ones to the King, whose Mind being set on them, obtained Surrenders, which the Parliament made valid by Act of Legislature. And this Session by ^{31 H. VIII.} Direction of the Court, passed an Act ^{14.} generally called the bloody Statute, for burning such as denied Transubstantiation, &c. viz. the six Articles therein mentioned.

The Parliament also put a sort of Legislature into the King's Hands, that the King for the time being with Advice of his Council might set forth Proclamations with Pains and Penalties in them, which were to be obeyed as if they were made and set by Act of Parliament, with an Exception, that these Proclamations should not be prejudicial to any Person's Inheritances, Offices, Liberties, Goods, Chattels or Life, so was ^{31 H. VIII.} the King made despotick by Act of Parliament; the Members whereof were his yoked Slaves. ^{3. 34 H. VIII. 23. Rep. 1. Ed. VI. 12.}

The Parliaments of this Reign gave up their own Rights and the Liberties of the People they represented, and appeared to be merely Instruments to gratify the King's Passions, without duly weighing the fatal Consequences which might attend the King's Demands.

And six Years after the Parliament completed their Works and vested the Revenues ^{37. H. VIII.} of Colleges, free Chapels, Chanteries, Hospitals, Fraternities, Guilds and stipendiary Priests in the King. ^{4.}

32 H. viii.
24, 25.

The Parliament gave the King all the Lands of the Knights of St. *John of Jerusalem*, as soon as it was known the King had a mind to them. This Parliament also dissolved the Marriage of the King with *Anne of Cleves*, as soon as the Ministry made it known to them that it would please the King.

32 H. viii.

37 H. viii.

In the twenty third of *Henry VIII*, Hospitals were dissolved, and in the thirty seventh of his Reign, Commissioners were by Act of Parliament appointed and authorized to enter and seize the Lands of certain Colleges.

Henry VII's and *VIII's* Reigns were the severest since *Magna Charta* was obtained, yet in their time were the Foundations of Liberty and Power of the Commons laid broader and stronger than ever: *Henry VII* owned not a parliamentary Title, and evaded a Title from the Right of the Princess *Elizabeth*, and deferred his Marriage, till he had obtained an Act of Parliament to settle the Crown upon him and his Heirs without any mention of the House of *York*, which Act was so ambiguously penn'd as to leave him room to assert afterwards a Right inherent in himself, independent of the Authority of Parliament, but durst not claim by Conquest, tho' it appears he had it at heart, by the Bull of Confirmation that he had obtained from the Pope, wherein were inserted such Titles to the Crown as he liked, particularly Conquest; He and his

his Son passed good Laws, for which they got large Suddies from their Parliaments, they pleased the Commons by lessening the Power of the Nobility, and encouraging the commuting slavish Tenures into Rents, and especially by opening a way to the Lords of alienating their Lands which gradually aggrandized the Commons, whose Power grew apace from their increasing their Estates in Land. If a Breach of Privilege happened at a time the King had a Bill before the Commons, the punishing was referred to them, tho' in a Case differently treated in former times, and such new Treatment made a Precedent in succeeding times.

King *Henry* hanged Papists for not owning his Supremacy in Cases Ecclesiastical, and burnt Protestants for Heresy, and all by Law, for he by one Means or other so managed his Parliaments as to have his Will made a Law.

Henry VIII's Death was on the twenty eighth of *January* 1546, but concealed to the thirty first, and then published in *London* and *Edward VI* proclaimed, and on the sixth of *February* was knighted by the Lord Protector *Seymour*, who by Letters Patents was authorized to do it. *February* the fourteenth King *Henry* was buried at *Windfor* with great Pomp and Splendor. The Funeral being over, the young King was crowned on the twentieth of *February*.

28 H. viii.
27.1 Ed. vi.
21.1 Ed. vi.
12.

On the fourth of *November* 1547, his first Parliament met at *Westminster*, and repealed the Act of the twenty eighth of *Henry VIII*, which gave Authority to the Kings after their Age of twenty four Years, to repeal by their Letters Patents all former Statutes passed by them before they were of that Age. *Henry III* cancelled his *Magna Charta* when he was at full Age, because it was confirmed in his Minority, when he had not the power of his Person or his Seal, but he had not the Consent of his Parliament, which was so far from approving, that they never ceased pursuing the King's Adviser therein the Earl of *Kent*, till they got him degraded in Parliament; but King *Henry VIII* knew so well how to manage Parliaments, that he could obtain Acts of Legislature for what he pleased; but the good King *Edward* thought cancelling and repealing Statute Laws, was a Power too great to be lodged in one Part of the Legislature, and that it was highly just and reasonable that Acts of Legislature should not be repealed or disannulled by any other Authority than the whole Legislature by whom they were made. In the first of *Edward VI*, the Act of the thirty seventh of *Henry VIII*, to give Royal Proclamations the Force of Acts of Parliament, was repealed, and so was the bloody Statute of the six Articles of the thirty first of *Henry*
ry

ry VIII. 14. and the several Acts of Treason repealed, made since the twenty fifth of *Edward III.*

King *Edward* after the Manner brought into Use by his Father, continued the Parliament called in his first by several Prorogations to his fifth Year, when the Duke of *Northumberland* caused the Parliament, summoned in the *Somerset* Administration, to be dissolved, to get a Parliament elected more attached to him.

In the third Year of his Reign a Bill was put into the House of Commons for reforming of Processes at Common Law, which went through that House and was sent to the Lords, but it dropt there.

Birner's
Ref. vol. 2.
96, 222.

The King having the Reformation of Religion much at heart, the Duke of *Northumberland* took Advantage thereof, to persuade the King to settle the Crown by his Letters Patents on the Lady *Jane Grey*, Daughter of the Duchess of *Suffolk*, who was next in the Intail of the Crown as limited by *Henry VIII's* Will, who was willing to resign her Right to her Daughter. Accordingly, the King signed his Letters Patents wherein he settled the Crown upon the Lady *Jane Grey*, and intended to lay it before the Parliament to be confirmed by parliamentary Authority, but the King's Death prevented its being laid before the Parliament. The Judges, *Montague*,
Baker

The Antiquity of National

Baker and Bromley, refused to draw the Assignment of the Crown, till *Northumberland* by Threats and the Expedient of a Pardon under the great Seal wrought upon them to draw the Settlement of the Crown, which all the Judges signed but *Hales*, and all the Privy-Counsellors but Archbishop *Cranmer*, who only signed as a Witness to the King's subscribing.

Burnes's
Ref. vol. 2.
143.

Before *Edward VI's* time, the eldest Sons of Peers were not eligible into the House of Commons, and could not sit there as Members; the first Instance of a Lord's eldest Son sitting a Member of the House of Commons, was in the Person of Sir *Francis Russel*, who whilst he was a younger Son of Lord *Russel*, was elected and sat in the House of Commons, and upon his elder Brother's Death it was debated in the House of Commons, whether he should continue to be a Member of that House as before, and determined in the Affirmative, and so entered in the Journal of the House, the twenty first of *January 1550*.

Upon the Death of *Edward VI*, the Council prevail'd on the Lady * *Jane Grey*, fore against her mind, to put out a Proclamation therein, claiming, her Right to the Crown of *England* founded upon *Henry VIII's* illegitimizing his Daughters, and *Edward VI's* settling the Crown by his Letters Patents on the Lady *Jane Grey*.

* Wife of
Guilford
Dudley
Son of the
D. of *Nor-*
thumb.

But

But Affairs took another turn, and the Lady *Mary* was, on the nineteenth of *July* 1553, proclaimed Queen in *Cheapside* by the Earl of *Arundel* with many other Lords, the Lord Mayor and Citizens of *London*; and on the third of *August* made her Entry into *London* with great Solemnity and Pomp, being accompanied with her Sister the Lady *Elizabeth*.

Burnet's
Ref. vcl. 2.

Great Care was taken to oblige the Noblemen who had given their assistance to the Queen: An Honour not before known in *England*, was contrived for *Ratcliff* Earl of *Suffex*, that he might be cover'd in the Queen's Presence, which Honour was confirmed to him by a Patent under the great Seal †: The Privilege of a Grandee of *Spain*.

Burnet's
Ref. vol. 2.
251.

† 2 Octob.
1553.

Queen *Mary* was crown'd on the first of *October* 1553, and the Parliament met on the fifth of the same Month; the Commons were very irregularly chosen in many places; in some places Men were chosen by Force and Threats; by Court Influence many Voters were hindred from going to the Places of Elections, and many false Returns made; and many that were duly returned were violently turned out of the House of Commons. However to engage the Parliament in her Interest, she put out a Proclamation wherein she remitted the Subsidies granted by the last Parliament to *Edward*

Burnet's
Ref. vol. 2.
252.

Acta pub.
XV. 335.

ward

The Antiquity of National

ward VI, out of an artificial Generosity, to please the People in general to the Damage of her Brother's Creditors, those Subsidies being given to King *Edward* to enable him to pay his Debts.

In this Reign the Authority of Parliament is not mentioned in the Preface to the Acts of the Session of Parliament but in the Body of the Act, begun in *Henry VIII's* time, continued in *Edward VI's*, and this Queen's time, thus ' Be it enacted by our ' Sovereign Lady the Queen, the Lords Spiritual and Temporal, and the Commons ' in this present Parliament assembled, and ' by the Authority of the same, &c.

In the Queen's first Parliament, nine Statutes relating to Religion and Church Affairs made in *Edward VI's* time, were repealed, and it was enacted, That after the 20th of *Decemb.* following, there should be no other Form of Divine Service but what had been used in the last Year of King *Henry VIII*.

When the Treaty for the *Spanish Match* was known, the House of Commons sent their *Speaker* with twenty of their House with an earnest and humble Address to the Queen not to marry a Stranger. The House was so inflamed, that the Court judged nothing could be obtained from the Commons without they had a satisfactory Answer to their Address, but instead thereof the Parliament was dissolved on the sixth
of

Burnet's
Ref. vol. 2.
261.

of *December* 1553, but sat long enough to undo all that was done in *Edward VI's* time towards Reformation of Religion.

Against the calling a new Parliament great Sums of Money * were remitted by the Emperor to *Gardiner* to soften the leading Nobility, and carry Elections for Commoners that would comply with the Designs of the Court, and *Gardiner* refused Justice in the Court of *Chancery* to all that would not conform to Directions.

* 1200000
Crowns.

The *Londoners* not liking the intended Marriage with the Prince of *Spain*, the Parliament was summoned to meet at *Oxford* the second of *April* 1554. Lord Chancellor *Gardiner* having granted Pensions to many of the leading Members of the House of Commons, thereby soften'd them. The *English* Ministers having made as good a bargain as they could with the Emperor, she was married to the Prince of *Spain* by Lord Chancellor *Gardiner* Bishop of *Winchester* on the fifteenth of *July* 1554, at *Winchester*. So was *England* bought and sold by a corrupted Prime Minister and a bribed Parliament.

Parl. Summons, 515.

A Parliament was summoned to meet on the twelfth of *November* 1554 at *Westminster*, which was the first Parliament of *Philip* and *Mary*, which recognized a Queen Regnant's Authority equal to that of Kings, thereby preventing a Design of the *Spanish* Party

Party, who would have had *Philip* sole Administrator, alledging, that the Laws of *England* declaratory of the Royal Prerogative of the Crown were in the Persons of Kings, and never in a Woman.

On the ninth of *December* 1555 the Parliament was dissolved; during this Parliament, an Information was laid in the King's-Bench against thirty nine Members of the House of Commons for departing from Parliament without the King and Queen's Licence, the Offence being against them, whose Writ commanded their Attendance: But the Judges finding the House of Commons took the Rights granted them by Act of Parliament in *Henry VIII's* time to be invaded by that Information, put off the hearing from Day to Day, till the Attorney-General said he would prosecute no further, so from that time the Commons punished their own Members for Absence.

6 H. VIII.
16.

4 Inst. 17.
44.

On the twenty first of *October* in the second and third of *Philip* and *Mary* 1555, a new Parliament was summoned to meet a *Westminster*. An Act passed, That whoever disturbed any Person in possession of Lands or Goods once belonging to the Church, on pretence of an Ecclesiastical Right, should be subject to a *Præmunire*; and an Act passed to confirm the Queen's Resignation of first Fruits and Tenths.

On

Councils or Parliaments.

383

On the twentieth of *January*, in the fourth and fifth of *Philip and Mary* 1557, a Parliament was summoned to meet at *Westminster*. The Courtiers in Parliament acquainted the Commons that the Queen intended to rebuild the Monasteries and restore them their Lands, which so fired the Commons that several of them laid their hands on their Swords, boldly saying, *They knew how to defend their own Properties*; which stopp'd the Queen's Intentions.

On the fifth of *November* in the fifth and sixth of *Philip and Mary*, A. D. 1558, a Parliament was holden at *Westminster* by Prorogation. On the seventh of *November*, the Queen sent for the *Speaker* of the House of Commons, and ordered him to lay before the House the ill Condition the Nation was in by the War with *France*; but the Commons were so dissatisfy'd, that they granted no Subsidy: So on the fourteenth of *November* the Lord Treasurer, Lord Chancellor, Duke of *Norfolk*, and several other Lords went to the Commons House and sat in the Privy-Counsellors Place there, and shewed a necessity of a Subsidy to defend the Nation against the *French* and *Scots*, and then they withdrew; upon which the Commons immediately enter'd into debate about the matter recommended to their Consideration by the Lord Chancellor (who was the Mouth of the Lords) and spent that

Burn. Ref.
vol. 2.
P. 368.

The Antiquity of National

that Day and the two following without coming to any Resolution.

Queen *Mary*, having in the Beginning of her Reign gained her Parliaments Concurrency by Pensions and Bribes, withdrew their Pensions thinking herself secure of them, which, together with her barbarous Executions made her Parliaments prove very uncompliant in the latter part of her Reign.

The Loss of *Calais* and the Neglect from her Husband, when he despair'd of Issue by her, with other Uneasinesses in the last Year of her Reign, increased her Melancholy, which with a long Declination of Health and Decay of her Spirits, brought her so low that a Dropsy ensued, which put a period to her Life on the seventeenth of *November* 1558, in the forty third Year of her Age, when she had reigned five Years, four Months and eleven Days.

Burn. Ref.
Vol. 2. 373.

Queen *Mary's* Death was concealed for some Hours, which the Lords of the Council spent in debate how to proceed. The Issue of their Consultations appeared about nine a Clock in the Morning, when the Lord Chancellor went to the House of Lords and imparted to them the News of the Queen's Death, and though the Bishops were sensibly affected at the Loss of Queen *Mary*, yet they all concurred with the Temporal Lords in proclaiming her Sister Queen

Queen. The Lords sent for the House of Commons, and the Lord Chancellor acquainted them with the Queen's Death, and desired their Concurrence in proclaiming the Lady *Elizabeth Queen*, as the indisputable Heir to the Crown. The Chancellor's short Speech being over, both Lords and Commons with repeated Cries echo'd out, *Long live Queen Elizabeth, long and happily may she reign.*

Now I proceed to the Reign of *Queen Elizabeth*, which was so glorious, and is so well rivetted in the Memory of all *Englishmen*, that I shall only mention some of the most remarkable Proceedings of the Parliaments in her Reign.

This *Queen*, at the Beginning of her Reign, removed Magistrates of Cities and Boroughs for being of the Romish Religion, and put into their places such as were Favourers of Reformation, who were instructed to use their Credit and Authority in influencing Elections, so that such Members might be return'd to Parliament as would concur with the *Queen's* Intentions to begin a Reformation of Religion. *Queen Mary's* Parliaments being chose by Court Influence, *Queen Elizabeth* and her Ministry found it necessary to pursue the same Measures in her first Parliament; but afterwards Elections were free, and Court and Country Interest the same.

VOL II.

I

The

The Antiquity of National

The Spiritual Lords were all Papists, and most of the Temporal Lords, and they must not be neglected but all summoned, and how to bring them into the *Queen's* measures was an Undertaking fit for her great Genius. In the first Privy-Council that she formed, she continued thirteen of her Sister's Counsellors, all zealous Romanists, to whom she added eight new ones as well affected to the protestant Religion; but before the Parliament met, she judged it necessary to remove every zealous Romanist from the Council and from other high Posts; this was a plain Indication to Lords and Commons of the *Queen's* Inclination to Reformation: Many that were Protestants in *Edward VI's* time, were in appearance, if not in earnest, Catholicks in *Queen Mary's* Reign; and as Religion, from the middle of the Reign of *Henry VIII* to the first Year of the *Queen's* Reign, was in a very fluctuating State, the great Men did not look upon it as dishonourable to conform to Junctures, and by the opening of the Parliament they became sensible in what Channel Honour and Profit would run, which may be fairly conjectur'd had more than a little weight with many, especially with those that had been used to change with the Times; as amongst the Bishops did *Heatb* Archbishop of *York*, *Tunstal* Bishop of *Durham*, *Tbirlby* Bishop of *Ely*, and some others

others that had complied with all the Changes made in Religion from the time King *Henry VIII* came to a Rupture with the Pope, to the first of *Elizabeth*.

Queen Elizabeth's first Parliament was ^{1 Eliz. I. 91} summoned to meet at *Westminster* on the twenty third of *January* 1558: The first Act of Parliament was for the Restitution of the first Fruits and Tenths to the Crown, and all ancient Jurisdictions; for the Repeal of divers Statutes and Revival of others, and for abolishing all foreign Power; the Particulars whereof I refer to the Statutes at large, where you may see all that was done for Popery in *Queen Mary's* five Years in Parliament repealed and altered in one Session of Parliament that did not last four Months, and a Power given the *Queen* by Act of Parliament to reserve some Lands belonging to Bishopricks to herself, as they became void, giving in lieu of them impropriated Tithes to the value of the Lands taken away; but the Church generally suffer'd by the Exchanges.

The Compliance with the *Queen's* religious Advances to a Reformation is not to be wonder'd at in the Commons, who are, a great many of them, new Members in every Parliament; but the Compliance of the Lords with Acts both for and against the Reformation in the Reigns of *Henry VIII*, *Edward VI*, *Q. Mary* and *Q. Elizabeth*, is
I 2
very

The Antiquity of National

very surprizing, they being a standing Part of the Parliament, whereas many of the Commons might be elected by a Court Influence, and formed to the Princes minds; though very little of that appears in the Histories of *Queen Elizabeth*.

Philip II of *Spain* did not desert the *English* Interest till he had lost all hopes of marrying *Queen Elizabeth*; and then she had for Enemies, Him, the King of *France*, the Queen of *Scotland*, the Pope, the Emperor, and all the Catholick Powers; and it required wise Conduct to keep the *Irish* and *English* Catholicks in good order, and at the time she set about reforming she had not one Ally, and to supply that want, she studied to make herself beloved by her People, and her Conduct was so successful, that she wanted no foreign Alliance. She had always the Sinews of War ready in her Treasury, which was managed with such good Oeconomy, that she was always beforehand and ready effectually to execute whatever she undertook; and she always kept a good Fleet in readiness, justly judging that a strong Navy would supply the want of Allies, and be the best Security and Bulwark of *England*.

On the fourth of *February* the Commons debated about an Address to the *Queen* to marry, and on the sixth, the * *Speaker* with the Privy-Counsellors of the House, and thirty

* *Thomas Gargrave.*

thirty Members more presented the Commons Address to the *Queen*, desiring her to take such a Husband as might make herself and the Nation happy, which Address the *Queen* received very graciously, assuring them, That if ever she married, she would make such a choice as should be to the Satisfaction and Good of her People; that her People were to her instead of Children, and she would as such regard them, and that she reckon'd her self married to the Nation by her Coronation Oath.

Burnet's
Ref. vo. 2.
p. 384.

The *Queen* did not so favourably receive an Address of the same nature eight Years after, when the Parliament of *November* 1566, fell into warm Debates about the Succession, reflecting upon her Majesty's neglecting the Interest of the Nation in that Article, and seemed resolved to insist upon her immediate Marriage or Declaration of a Successor. The Earl of *Leicester* went that great length, to say, *A Husband ought to be imposed on the Queen, or a Successor appointed by Parliament against her Inclination*; and herein he was seconded by the Earl of *Pembroke* and Duke of *Norfolk*. This Debate in Parliament highly offended the *Queen*, which the three noble Peers were soon sensible of, for they were excluded the Presence Chamber, till by excusing their Motion as flowing from their Zeal for her *Majesty* and the Prosperity of the Nation,

Leicester's
Life, 44.

Camb. Life
of *Q. Eliz.*
lib. 1. p. 83.

The Antiquity of National

which she had so much at heart, and their making the Motion without first having her *Majesty's* leave; for which, by making an humble Submission, they obtain'd Pardon.

This great *Queen* never invaded the just Rights and Liberties of Parliament, neither on the other side would she suffer the Prerogative of the Crown to be the least diminished; she put the Negative upon more Bills brought to her for her Royal Assent than any one of her Predecessors had done. She (says Sir *Simon D'Ewes* in his Parliamentary Collections) rejected seven Bills that were drawn up by the Commons for a farther Reformation in Religion; and to prevent any such Bills passing in the House of Commons without her being previously consulted therein, sent for the *Speaker* of the Commons, and gave him a sharp Admonition, telling him, She would not suffer the Commons to exceed the Powers given them by her Predecessors Writs and hers, wherein their Part was limited to such Matters and Things, as she and the Lords sent to them for their Approbation and Confirmation, to which they were to say *Yea* or *No*, and not to offer at Amendment of Laws, otherwise than by Petition to her in the Lords House, as was the Parliamentary Proceeding in *Edward III's* time, when the Commons Petition, and the King's Answer in the Lord's House made the Statutes.

She

MS. Journ.
18 James.
P. 254.

Inspection
of
long Parl.
p. 2.

MS. Journ.
of 35 Eliz.
P. 5.

She farther let the Speaker know, that it was her Pleasure, that if any forward idle-headed Members of the House of Commons, that would venture to hazard their own Estates, by offering Bills for Reformation of Church or State, that he should not receive them, till they were viewed and considered by her and the Lords, who were fitter to consider of such Matters and better Judges of them, and from whom by the ancient and continued Course of Proceedings in Parliament, they took their first Spring as appears by the Journals of Parliament.

Lex Parliamentaria,
145.

MS. Journal quarto of Lord Keeper *Williams*

The Commons in the *Queen's* time made frequent Attempts to extend their Privileges, but all of them proved abortive, she never refused them their ancient Rights and Freedoms, but new Claims she nipp'd in the Bud.

In King *James's* time the Commons made Complaint of the many Grievances in *Ireland*, particularly of the Growth of Popery; the King in a Message to the House expressed himself to be very careful of *Ireland*, and expected that the redressing of Grievances there be left to himself, that he might make it his Master-piece.

Journal, 18.
James,
254.

Sir *George Moore* said that in *Queen Elizabeth's* time, upon a Message from her Majesty to the House of Commons, concerning a Business against a great Man, the House did

The Antiquity of National

desist and give it over; and another time concerning the reducing of the Government of the Church, on the like Message the House did desist, and therefore he desireth the House to do the like; and after several Speeches, it was resolved to send a Message of Thanks to his Majesty for his gracious Message to the House concerning the Business of *Ireland*, and to desire to know his Majesty's Pleasure, whether the House shall proceed any farther to enquire into that Business for the better Information of his Majesty therein, if otherwise the House humbly submit to his Majesty's Pleasure.

Sir *George Moore* being a Well-wisher to a good Agreement between King and Parliament, produced the aforesaid Instances of the profound Regard and Veneration of Parliament for the *Queen*, which had its desired Effect, being the main Spring of the aforesaid dutiful Message to the King, which he did not often meet with, as will appear when I come to the Account of King *James's* Parliaments.

When the *Queen* made an Answer to the Speaker's Speech, he with the whole House fell upon their Knees, and so continued till she bid them stand up. In the thirty fifth of her Reign the Speaker was sent for to Court, where the *Queen* gave him Commandment what to deliver to the House,

as

as Sir S. D'Ewes says in his Parliament Journal.

The *Queen's* Title to the Crown was recognized in the first Year of her Reign. 1 Eliz. 3.
 An Act passed in the thirteenth of her Reign to make it Treason to affirm that 13 Eliz. 1.
 the *Queen* with and by Authority of Parliament is not able to make Statutes of sufficient Force and Validity, to limit and bind the imperial Crown of *England*, and the Descent, Inheritance and Government of the Realm and the Succession. The same Statute prohibits writing or publishing any Books affirming any one Person is, or ought to be Heir and Successor to the *Queen*, except the *natural Issue of her Body*. Cambden's Elizabeth.
 Some Historians say the Word natural, was made use of in this Statute by the Influence of the Earl of *Leicester* upon some private Views.

In the twenty third of *Elizabeth*, *Paul Wentworth* a Member of the House of Commons, moved in the House for a Day to be appointed for a publick Fast, and that during the Session of Parliament, there should be every Morning at seven o' Clock a Sermon before the House sat to Business; *Wentworth's* Motion was carried in the Affirmative by a Majority of fifty, and an Order thereupon entered in the Journal; for which the *Queen* sent a Reprimand to the House by her Vice-Chamberlain, upon which

The Antiquity of National

which the House sent by the Vice-Chamberlain their humble Submission, begging the *Queen's* Remission for their Offence, promising to forbear committing the like for the Future.

In the twenty seventh of the *Queen*, *Richard Coke* a Member of Parliament being served with a *Sub-pœna* of *Chancery*, the Commons took it to be a Breach of Privilege of their House, but Lord Keeper *Brumley* boldly answered, that the House had no Privilege against *Sub-pœna's* as they pretended, neither could he allow of the Precedents the House made use of in the Case, unless the Commons could prove the same had been allowed and ratified by Precedents in the high Court of *Chancery*; the ancient Precedents were quite otherwise, for the Commons did not inflict Punishments for Breach of their Privilege, till they had conferred with the Lords, and they referred back the Punishing to the Commons.

In the thirty fifth of the *Queen*, she sent a Serjeant at Arms to take out Mr. *Morris* and some others, and committed them to Prison for Speeches in the House that offended her *Majesty*; whereupon Mr. *Wroth* moved the House that they would be humble Suiters to her *Majesty*, that she would be pleased to enlarge those Members of the House that were restrained; The *Queen's* Answer

to

to the Commons Petition was, that she had committed them for Causes best known to herself, and that it did not become the House, to call her to Account for what she did by her royal just Authority, that the Causes for which they were restrain'd may be high and dangerous, and that it did not belong to their House to search into such Matters.

In the thirty ninth of the *Queen*, the Commons by Serjeant *Yelvoerton* their Speaker, complained of certain Monopolies, to which the Lord Keeper *Egerton* made Answer in her *Majesty's* Name, that her *Highness* hoped her dutiful Commons would not endeavour to take away her lawful Prerogative, which is the chiefest Flower in her Garland, the principal and head Pearl in her Crown and Diadem, but that they will rather leave that to her own Disposition. The Reader will find this Branch of the Royal Prerogative strenuously attacked by the House of Commons in the eighteenth of King *James*, of which more in the Sequel. The *Queen* would not allow the Commons to bring in a Bill against Monopolies, but issued out a Proclamation against Monopolies, which was so agreeable to the lower House that they sent her an Address of Thanks, which King *James* had not upon the like Occasion.

*Baker's
Chron.
414.*

In

MS. Jour-
nal of 35
Eliz.

In the Parliament of the thirty fifth of the *Queen*, Sir *John Puckering* Lord Keeper, in his Speech at opening the Parliament, declared the Causes of calling the Parliament, the chief of which was to raise Subsidies to enable her *Majesty* to fit out a Fleet and be otherwise provided effectually to oppose the King of *Spain's* second Invasion, which he is preparing for *England*, being now building lighter Ships than he made use of in 1588, in order to the more effectually invading her *Majesty's* Dominions.

And her *Majesty* requires, that the principal Consultations be of the best Manner of withstanding the intended Invasion, and that Spring was so near approaching and the time of Action coming on so fast, she expected they should be expeditious in granting Supplies, and not spend the time in long Speeches and devising new Laws and Statutes, there being already so many that rather than burden the Subject with more, it would be of more Service to the Nation (at a proper time) to make an Abridgement of those already made: The Lord Keeper's Speech ended, the House was (in the Words of the MS.) dissolved for that Day, which was the nineteenth of *February* 1592. I presume the Word *dissolved* imported no more than adjourned.

As

As to an Abridgement of the Statute Laws mentioned in the Lord Keeper's Speech, Sir *Francis Bacon* observed that it was not to be done suddenly, nor in one Parliament, nor scarce a Year would suffice to purge the Statute Book and lessen the Volume of Laws, they being so many in Number, that neither common People can half practise them, nor the Lawyers sufficiently understand them, and that nothing could tend more to the Praise of her *Majesty* than a wise Abridgement of the Statute Laws; the *Romans* appointed ten Men to correct and recall all former Laws, who set forth the twelve Tables of *Roman Law*.

On *Thursday* the twenty second of *February* both Houses met, when the *Queen* was set in the Lords House, the Commons went thither and presented *Edward Coke*, Esq; whom they had elected their Speaker, who according to Form and Custom made a disqualifying Speech, then his Election being confirmed by the *Queen*, he made his Speech of Thanks for the Honour done him, professing his Loyalty to her *Majesty* of whom he gave a most high and just Character.

Then he shew'd out of the History of *England* how the Kings of *England* ever since *Henry III* had maintained themselves to be supreme Heads over all Causes within their Dominions, and then recited the
 Laws

The Antiquity of National

Laws made in every King's time for maintaining their own Supremacy, excluding the Pope, and drew his Proofs from the Statutes of every King from *Henry III*, to *Edward VI*.

Then continued the Speaker, I am to make your *Majesty* three Petitions in the Name of the Commons;

First, That the Liberty of Speech and the ancient Custom of Parliament be granted to your *Majesty's* Subjects.

Secondly, That we may have access to your Royal Person, to present those things that shall be considered amongst us.

Thirdly, That your *Majesty* will give us your Royal Assent to the things that are agreed upon.

To this Speech the Lord Keeper having received new Instructions from the *Queen*, replied by her *Majesty's* Order.

First he commended the Speaker for his Speech, then added some Examples out of History for the King's Supremacy in the time of *Henry II*, and the Kings before the Conquest.

As to the Praises given to her *Majesty* for delivering the Nation from the Attempts of Enemies, she would have the Praise attributed to God; and as to her wise and just Administration she said they might have a wiser Prince, but never should they have one, that more affectionately regarded

garded them, or would carry a more even Hand without distinction of Persons, and such a Prince she wished they might always have.

To your three Demands the *Queen* answereth, That Liberty of Speech is granted you, but how far, this is to be thought on; there be two things of most Necessity, and these two do most harm, which are Wit and Speech, the one exercised in Invention, the other in uttering things invented; Privilege of Speech is granted, but you must know what Privilege you have, not to speak every one what he listeth, or what comes into his Brain to utter that; but your Privilege is for such Speech as shall be used with Judgment and Sobriety: Wherefore Mr. Speaker, her *Majesty's* Pleasure is, that if you perceive any idle Heads which will not stick to hazard their own Estates, which will meddle with reforming the Church and transforming the Commonwealth, and exhibit any Bills to such purpose, that you receive them not, till they be shewed and considered by those whom it is fitter should consider of such things and can better judge of them.

To your Persons all Privileges are granted, with this Caveat, that under colour of this Privilege, no Man's ill Doings, or not performing of Duties be covered and protected.

To

The Antiquity of National

To the last, free Access to her *Majesty's* Person is granted, so that it be upon urgent and weighty Causes, and at times convenient, and when her *Majesty* may be at leisure from other important Causes of the Realm.

On the twenty fourth of *February* 1592; Mr. *Peter Wentworth* and Sir *Henry Bromley* delivered a Petition to the Lord Keeper, therein desiring the Lords of the upper House to be Suppliants with them of the lower House unto her *Majesty* for the intailing of the Succession of the Crown, whereof a Bill was already drawn by them.

Her *Majesty* was highly displeas'd therewithal, after she knew thereof, as a Matter contrary to her former straight Commandment, and charged the Council to call the Parties before them; Sir *Thomas Heneage* presently sent for them, and after Speeches had with them, commanded them to forbear the Parliament and not to go out from their several Lodgings.

The Day after they were called before Lord Treasurer *Burley*, Lord *Buckburst*, and Sir *Thomas Heneage*, whom the Lords treated favourably and with good Speech.

But so highly was her *Majesty* offended; that they must needs commit them, and so they told them. Sir *Henry Bromley* and one Mr. *Richard Stephens* to whom he had imparted the Matter, were sent to the *Fleet*,
and

and so was Mr. *Welsh* the other Knight of *Worcestershire*.

On *Monday* the twenty sixth of *February*, a Bill was offered in the House of Commons against Recufants; on *Wednesday* the twenty eighth of *February* the Bill was read in the House, which being contrary to her *Majesty's* Order and Directions, she sent for the Speaker, and reminded him, that at the opening the Sessions, the Lord Keeper delivered her *Majesty's* Command, that the House should not meddle with Matters of State or Causes Ecclesiastical, and the Speaker told the House, that her *Majesty* was highly offended at the Bill against Recufants being brought into the House, so contrary to her express Command; and the Speaker said her *Majesty's* present Charge and express Command is, that no Bill touching these Matters of State or Reformation in Causes Ecclesiastical be exhibited, and upon my Allegiance I am commanded, if any such Bill be exhibited not to read it; so the Bill dropt.

Tho' the most part of this Account of the Sessions of Parliament of the thirty fifth of *Elizabeth* is already mentioned from Lord Keeper *Williams's* Manuscript, and by a Recital in a Manuscript Journal of the eighteenth of King *James*, yet I repeat the Substance of it from this Manuscript Jour-

The Antiquity of National

nal of the thirty fifth of the *Queen*, to shew that the three Journals all agree in the main Matter, that the *Queen* did not allow Matters of Church and State to be altered by Bills originally springing from the lower House. The Original of the Authority of the House of Commons, being only *ad audiendum, faciendum & consentiendum*, as expressed in the Writs of *Edward I.* for summoning the Commons to the Parliament, as is more particularly mentioned in Page 211.

Lord *Bacon* speaking of *Queen Elizabeth*, says, ‘ As for her Government, I assure my self I shall not exceed, if I do affirm, that this Part of the Island never had forty five Years of better times; and yet not all through the Calmness of the Season, but thro’ the Wisdom of her Regiment.’

This great and wise Princess, by her just Administration, made herself more popular than her Predecessors; in her Reign, the Sense of the Court, of the Parliament and of the People were the same, from whence it came, that she never asked Subsidies of her Parliaments but what were cheerfully and freely granted, they knowing all would be applied to the Benefit of the Publick: She so entirely depended upon the Affections of her People, that she seemed to decline all other Tenure of the Crown; her
wise

wise Conduct gained her such an Esteem, that she reigned in the Hearts of her People, which she esteemed her greatest Happiness; Nature as well as Art fitted her for Government, she had Dignity without Pride, she was affable, without sinking into low Familiarity; when she courted her People, she did it in a Manner becoming a great Princess, yet agreeable to her Subjects; all her Actions were grand, and all esteemed as good: So happy was then Prince and People, whilst the Interest of the Governour and Governed was the same.

The *Queen* by her own most extensive Abilities for Government chose able and wise States-men for her Ministers, from whence her Councils were secret and her Resolutions steady, and all her Reign prosperous and her Undertakings successful; she would not lose any Part of her legal Prerogative, neither did she aim at abridging her Parliaments of their ancient Rights, Liberties and Privileges; but with a high hand, accompanied with Sweetness, kept them within the just Bounds, Custom and Usage had prescribed.

She made no Demand on the House of Commons for Aids and Subsidies, but when Necessity of State required it. In the eighth Year of her Reign she shewed her generous Love of her People, by remitting one of the four Subsidies granted her by Parlia-

The Antiquity of National

ment, when she found three of them would answer her present Occasions.

Her Exchequer was always so well in Money or Credit, that she could in a short time equip a Royal Fleet to guard the Coast from Invasions. When her Treasure grew low, and a necessary Expence in view, she went to that inexhaustible Fund, the Affections of her People, the very Paradise of Princes, where she never failed; the Commons well knowing that all they granted, was applied to the Service of the Publick, in either offensive or defensive Wars, supporting weak foreign Princes against the Power of such as were growing too great, and thereby keeping the Princes of *Europe* employed on the Continent, and her own Dominions safe.

Her Ministers did not grow rich at the publick Cost, she chose Men that were fit for Places and did not make Places fit for Men; she well knew how to distinguish her Ministers according to their Abilities and Merits; she chose wisely and rewarded gently; when she did heap Favours on them, it was in Reward of their Labours in her Service, for which the People had as much Reason to thank them, as the *Queen* had to reward them. Her Ministers might with Lord *Bacon* say, they were richer in Obligations than Payments; and it may be said of her, that her *Majesty* and

and Thrift strove for Preheminence, without approaching the Confines of Baseness and Prodigality.

Her Ears were open to all that had any thing to offer for Improvement of Trade, new Discoveries, and the Advantages that might accrue to the Nation from them.

She freely received Informations that tended to the timely preventing any Dangers that threatned the State, and Truth could not be kept from her by the most powerful of her Ministers.

Her Docks, Yards, and Magazines were always well stocked with Timber, Planks, Masts, Cables, Anchors, and other naval Stores, that a Squadron of Ships of War could upon any sudden Occasion be soon rigged out.

Her Exchequer was under such regular OEconomy, that it was esteemed of equal Security with the Exchange; the Tellers of her Exchequer being as ready to issue out Money to those that had Debentures, as they were willing to receive it; from whence upon any sudden Emergency, the City of *London* was free and ready to supply her pressing Occasions till the Parliament met, when in her time the Commons began with Subsidies demanded, and ended with Redress of Grievances and salutary Laws.

The Antiquity of National

After the *Queen's* first Parliament, as before mentioned in Page 388, Elections were free, Electors not awed, courted or bribed by her Ministry, she reigned in the Hearts of her People, and the more truly the People were represented in Parliament, the more secure was the *Queen* to have all Matters she recommended, to be complied with and finished with Dispatch.

She was in such high Veneration with the Lords, that they prevented her putting the Negative on some Bills that came from the Commons: She managed both her Houses of Parliament with such Wisdom, that Prerogative and Privilege came not upon the Carpet. Her Administration in all Parts was so justly temper'd, that it was esteemed as advantageous to the People, as their profound Obedience brought Honour to her, and the Regard of all foreign Powers.

The ancient Grievances of the Forests were forgot in her Reign, her Forests, Parks and Chases, were rather a Convenience than Burden to the Subject. A Man of Quality or Eminence was as rarely denied Venison, as were the Stealers of it punished.

Sir *Edward Coke* gives an Instance of Bribery in the *Queen's* time as a Rarity, which being the Crime of private Men, I do not couple it with the Paragraph
that

that acquits the Ministers of such Practice.

Thomas Long gave the Mayor of *Westbury* four Pounds to be elected a Burges there, who thereupon was elected; this Matter was examined and adjudged in the House of Commons, and the Mayor fin'd and imprisoned and long expelled the House; for such corrupt Dealing (says *Sir Edward*) was to poison the Fountain it self. 4 Inst. 23.

What would such a Parliament do with the Bribers and Bribed of later times. If *Sir Edward Coke* made so just a Reflection upon that poor Bribe of four Pounds, how much more sharp and severe would his Censure have been if it had been hundreds or thousands.

The *Queen* at the beginning of her Reign had two Parties to manage, one was those of the old Religion, the other was those of the new, which latter she had at heart to support and maintain, but in her great Wisdom shewed a tender Affection to both Parties, thereby making herself *Queen* of her whole People; she continued in her Privy-Council above half of *Queen Mary's* Counsellors that were Papists, to which she added a few that were well affected to Reformation, whose Moderation and Abilities were well known to her, and by gentle Steps, without discriminating those of the old Religion as Enemies to her and her

BURN. Ref.
vol. 2. p.
418.
Strip. Ref.
pag. 539.
13 Eliz. 1.
2.

Journal,
18.
Jac. 1. p.
415.

1 Eliz. 19.
Strip. Ref.
971

Government, carried on her Intentions of Reformation so smoothly, that those that were not well affected thereto, finding they were like to enjoy their civil Rights and Liberties, in common with the rest of her Subjects paid Duty and Obedience to her Majesty, till Pope *Pius Quintus* sent his Bull into *England*, wherein all her Subjects were absolved from their Oath of Allegiance or any other Duty, and all that obeyed her Anathematized: Then the *Queen* was guarded by a new Act of Parliament, that made it Treason to receive and publish any Bull from the Pope, and the Laws against those that owned a foreign Power, put in more strict Execution; but among the Papists the *Queen* distinguished those that were so in Conscience, and obedient to the Government in civil Matters, from those that were Papists in Faction, and so she distinguished the Puritans in Conscience, from the Puritans in Factions.

Pursuant to an Act of Parliament of the first Year of the *Queen*, she made exchanges of Lands with some of the Bishops, and took Manors and Lands from vacant Bishopricks, and in lieu thereof granted Parsonages impropriated, formerly belonging to Monasteries, Tenths of the Clergy and some other such like Considerations: I give you one Instance in this Case in the Bishoprick of *Ely*,

The

The *Queen* made a Contract with Dr. *Richard Cox* her Almoner, before she collated him to the Bishoprick of *Ely*, that he should surrender to her, the Manors of *Dereham* and *Shipdham* in the County of *Norfolk*, and the Demean Lands of those Lordships, and other Manors and Lands to the Value of three thousand Pounds a Year and upwards; in consideration thereof, the *Queen* agreed to grant to the said Bishoprick certain Impropriations and Advowsons in *Norfolk* and *Suffolk* of equal Value: But after Dr. *Cox* was fixed in the Bishoprick, a Qualm of Conscience came upon him, and in a suppliant Letter to her *Majesty* he humbly begged to be excused from surrendring the said Manors and Lands, as being simonaical and unlawful. This Refusal of the Bishop so fired the high-spirited *Queen*, that she in her Anger writ him a hectoring threatenng Letter, in which she swore by God, that if he did not perform his Promise, she would humble his prelatial Pride, which Threat so intimidated the Bishop, that dreading the *Queen's* Wrath more than the Crime of Simony, he surrendered the Manors and Lands according to the Promise he had made to her *Majesty* before he was collated to the Bishoprick.

The Act of Parliament that made Alienation of the Lands of vacant Bishopricks ^{1 Jac. 1.} ^{3.}

to

The Antiquity of National

to the *Queen* and her Successors legal, was repealed in King *James I's* time.

Whilst the Monasteries enjoyed their ancient Possessions, there was no Occasion for an Act of Legislature for the Relief of the Poor, so amply did those Houses, the Bishops, and other plentifully endowed Ecclesiasticks give Succour to those that were in Want; whereas in the next Age, *viz.* in the thirty ninth of the *Queen* no less than eleven Bills were brought into the House of Commons for that purpose, which being a thing so absolutely new, would not go down with the Commons, and the Poor left without any national Provision for raising Money for their Relief from that time for four Years more; by which time, the Wants of the Poor appeared so great and pressing, that in the forty third of the *Queen*, an Act passed for a parochial Relief of the Poor, by taxing each Inhabitant, which was the first Act of Parliament of that kind that was ever made in *England*; and even that might not then have been found necessary, if at the Dissolution of the Monasteries, more of their Lands had been appropriated to Hospitals, or some way or other to Guardians of the Poor, for the Use of the Aged and Infirm, that could not maintain themselves and Families by their Labour.

Monast.
Eng. Pref.
9.

The

The great *Queen Elizabeth* died on the twenty fourth of *March* MDCII. *Sir Robert Cary* posted away to *Scotland* to be the first Carrier of the News of her Death to *James VI*, King of *Scotland*: And within a few Days, the Lords of the Council sent a message in form by *Sir Charles Piercy*, *Mr. Thomas Somerset*, and *Sir Thomas Lake* Clerk of the Signet.

Before I begin with the History of the Parliaments of King *James*, an Account of his Genealogy and Right to the Crown of *England* by Inheritance is a proper Introduction.

Henry VIII, pursuant to the Statute of ³⁵H.VIII. the thirty fifth of his Reign, limited the Succession of the Crown by his Will, and therein set aside his eldest Sister *Margaret*, who was married to *James IV* King of *Scotland*, whose Son *James V* had an only Daughter *Mary*, who was Queen Regnant of *Scotland*, who married *Henry* Lord *Darnly* eldest Son of *Matthew* Earl of *Lennox*, whose Son *James VI* of *Scotland*, upon the Death of *Queen Elizabeth*, succeeded to the Crown of *England*, notwithstanding the Exclusion of his Grandmother *Margaret* by *Henry VIII*'s Will, tho' *Brook*, Lord *Cobham*, *Sir Walter Raleigh*, and some others pretended to set up the Title of the Lady *Arabella Stuart*, Daughter of *Charles* Earl of *Lennox*, who was younger

*Baker's
Chronic.
427.*

The Antiquity of National

younger Brother of *Henry Lord Darnly*, who dying before his Father *Matthew Earl of Lenox*, was not Earl of *Lenox*; but these Patriots thereby only aim'd at obtaining Articles in favour of the *English*.

But to proceed to my History of Parliament; and first note, That no Act relating to alter the Succession of the Crown passed after the thirty fifth of *Henry VIII*, till in King
 1 Jac. I. 1. *James I*'s Parliament begun at *Westminster* the nineteenth Day of *March* 1603, the King's Right to the Crown of *England* by Right of Succession was recognized by Act of Parliament; and there was great Harmony between the King and his two Houses, and thirty three Acts passed, amongst which,
 1 Jac. I. 2. one was to appoint a Committee of Lords and Commons to treat with a Committee of Lords and Commons of *Scotland* there appointed, about an Union of the Kingdoms of *England* and *Scotland*; which Act was farther continued by an Act of the
 3 Jac. I. 3. third, and by another Act of the fourth of
 4 Jac. I. 1. his Reign, but nothing was concluded therein till the Reign of the glorious Queen *Anne*.

In the Beginning of King *James*'s Reign the People of *England* began to fear the King had too strong an Inclination to govern despotickly. Royal Proclamations were more frequent than in former Reigns, and in them he declared, That his Will and
 Com-

Commands therein published should be obeyed and taken for Law, in which he outdid *Henry VIII*, who ventured not such a length till he obtained an Act of Parliament that his Proclamations should be as valid as Acts of Parliament in all things but such as were excepted in the Act. But King *James* forgot that *Edward VI* took it to be too great a Power in the King, and repealed the Act of *Henry VIII* in the first Year of his Reign, *Chapter 12.*

In the third Year of his Reign he issued out a Proclamation therein publishing his Intention to call a Parliament, and in the Proclamation gave broad hints, very near, if not plain Indications, that he intended to take upon himself the Direction of the manner of determining the Right of controverted Elections of Members of the House of Commons.

Rapin,
N^o. 48.
P. 277.

This Proclamation raised great Fears and Jealousies, that the Privilege of Parliament would be struck at; and an Opportunity soon offer'd to the King to show what he meant in his Proclamation relating to controverted Elections.

The House of Commons determined *Sir Francis Goodwin* to be duly elected a Knight for the County of *Bucks*, and that *Sir John Fortescue* was not duly elected. The King resolving to interpose his Authority in the Case, sent to the House of Lords

Hist. of
England
under the
Stuarts.
P. 22.

The Antiquity of National

Lords to demand a Conference with the Commons about Sir *Francis Goodwin's* Election: The Commons surprized at so unusual and extraordinary a Message, answer'd, *That they did not look upon themselves obliged to give an account of such Matters, and therefore could not grant the Conference required*; to which the Lords replied, *That the King having been acquainted with what had passed in Sir Francis Goodwin's Case, thought himself obliged in honour to have the Case debated again, and had ordered them to confer with the Commons on that Subject*; whereupon, the Commons by their *Speaker* gave their Reasons to the King, why they could not admit of such Innovation, but all they could obtain, was, that instead of a Conference with the Lords, the King positively commanded them to have one with the Judges; This was as disagreeable to the Commons as the other: So they set down their Reasons in writing, why they could not comply with one Conference or the other, and deliver'd them in at the Council-board, desiring the Lords of the Council to interceed for them to the King, that he wou'd not make such a breach of their Privileges: The Lords told them, That the King absolutely commanded them to have a Conference with the Judges; at which positive Command, the Commons were extremely concerned and surprized: Never-
theless

theless being apprehensive that they should be accused of too easily engaging in a rupture with the King, they deem'd it better to yield than to stand out, but fully resolved however to stand by and keep to what had been determined in the Case in their own House.

In all appearance the King had run himself into a very slippery and difficult Case, and not likely to have come off with Honour, had it not been for Sir *Francis Goodwin's* Moderation, who chose to yield up his Right rather than be the Instrument of a Quarrel between King and Commons, and therefore desired the House to order the County of *Bucks* to choose another Knight in his stead. Both King and Commons equally accepted of this Expedient, which prevented them bringing things to Exremities.

But the King might from hence plainly perceive; that no great regard was paid to that part of his Proclamation for calling the Parliament, wherein he published his Intent to determine controverted Elections of Members of the House of Commons. The Commons might justly fear this might be but the first step towards greater Encroachments upon their Privileges: And it will appear in the Sequel, that from this time the Commons grew very fearful of losing ancient Privileges.

Rapin.
N^o. 50.
P. 452, 494

In

The Antiquity of National

In this Parliament there grew up a remarkable Distinction of Court and Country Party, which continued to *Charles II's* time, when the two Parties were distinguished by or under the Names of *Tories* and *Whigs*, one for extending the King's Prerogative, and the other insisting on the Rights, Liberties and Properties of the People.

Royal Prerogative and Privilege of Parliament, particularly that of the House of Commons, is of much later date than that of the Lords House of Parliament: The Privilege of the Commons grew up by Degrees, that of the Lords by original Contract between them and their Leaders in Conquest. The Privilege of the Commons being of later Growth, must be defined by Custom, Usage and Precedent.

To trace this matter up into Antiquity, I begin with the *Anglo-Saxon* Conquerors of the *Britons*, who had no Monarchical Government in the Countries from whence they came: Aristocracy was the Form of Government amongst them in *Germany*, and under that Form of Government they lived here till in time the chief Leader of every Tribe assumed the Title of King.

The noble *Britons* fled from the conquering *Saxons* into *Wales* and the mountainous western Parts of *Britain*, and the poor miserable *Britons* that remain'd amongst the
Saxons

Saxons were no better than Slaves to the Conquerors, were not in a capacity to demand or expect any Privileges or Favours other than their conquering Masters deign'd to allow them.

Then as to the auxiliary *Saxons* that came over with the Captains or Leaders, they were Coparciners with the Leaders in the Lands of the *Britons* in an agreed Proportion, according to such part as they performed in the Expedition and Conquest, and had by Compact the same Right to their several Allotments as the Captains Conductors had to theirs.

After the *Saxon* chief Captains assumed the Title of Kings in tract of Time, their Prerogatives gradually increas'd; but still the Partners in Conquest maintained and enjoyed their Rights and Privileges in the Lands assign'd to them by common Consent and Agreement; they being subject to no Laws of Conquest, they being Partners and Sharers in Conquest, and these landed Men, those second-rate Captains were Members of the National Councils; all Power being founded in Property, the original *Saxon* Proprietors were Partners with the Chiefs in Legislature and Administration, every Chief of a Town or District held a Court and judg'd the People both in Cases Criminal and Civil, and were the Predecessors of our Lords.

The Antiquity of National

The first *Norman* King divided *English* Lands amongst his Assistants called his Barons *i. e.* his Men, his Tenants, and these were great Men indeed, whose Power proved inconvenient to some succeeding Kings; those great Tenants were the King's Counsellors, and they took care of the Interest of their Tenants in national Councils.

In *Edward* I's time Representatives of the Commons were summoned to Parliament, and from and since that time, must the Privileges of the House of Commons be searched for, to be sure none before.

Prerogative and Privilege being very extensive, and in but few Instances defined by any positive Law, a large Field is left open for Kings and Patriots to exert their Wisdom and Moderation.

Instances appear before in this Treatise how great and wise Kings out of innate Goodness or Reason of State, have avoided Disputes with their Parliaments about Prerogative and Privilege. *Edward* I, *Edward* III, *Henry* V, *Edward* IV, *Henry* VIII, and *Queen Elizabeth* managed the great Machine of State with such Skill, that Prerogative and Privilege failed together into the same Port, negotiated friendly, and had the Happiness to escape all Storms and Tempests. *Henry* III, *Edward* II and *Richard* II, are recorded for Princes that endeavoured to stretch Prerogative beyond usual

usual Bounds, and two of them stretched it till it cracked. King *James* enjoying so little of the King in *Scotland*, resolved to take a full Swing in *England*, and to shew his Talent of Speech-making; imagining he could set all things in so proper a Light, as to be agreeable to the People; he talked much of his Royal Power, Prerogative, and *Jus Regis*, which was so far from reconciling the People to it, that his Speeches were Warning-pieces, that set the People upon their Guard, and raised Jealousies that lasted through his whole Reign, and produced fatal Consequences in succeeding times, but no more of that.

King *James's* Revenue not answering his Expences, he found it necessary to have a Session of Parliament in the twelfth Year of his Reign, *Anno Dom.* 1614, where he demanded Aid in his Speech at opening of the Parliament, and therein desired that the first Matter of the Session might be Aid, and promised after that granted; he would give them leave to examine into Grievances. But the Commons inverted the Method proposed by the King, and began with Grievances, which, after two Months sitting and debating about Grievances, the King dissolved the Parliament, before any Grievances were redressed or any Money granted: Soon after the Dissolution, the King committed several Members of the

L 2

House

The Antiquity of National

House of Commons without Bail, for speaking as he judged too freely about Grievances, which Freedom the King would not bear, it being so different from the Manner of his Courtiers, who always addressed him with high Admiration of his Wisdom and Justice.

Hist. of
Eng. under
Stuarts,
pag. 42.

The King being disappointed of Aid from his Parliament, set his Ministers to work to contrive ways to raise Money, without parliamentary Authority; they pitched upon the way of Benevolence, and Gentlemen well secured to the Court Interest being made Sheriffs, Orders were sent to them, to demand in their several Counties of all Persons of Ability a free Gift, to supply the King's pressing Occasions, with Directions to return up the Names of such as refused to contribute or not give in proportion to their Abilities; but this Benevolence fell greatly short of the King's Expectations.

In the first Years of his Reign some good Laws with Difficulty had the Royal Assent, but from the end of the Session of Parliament of the seventh of his Reign, not one Statute Law was made till the eighteenth of his Reign, when three Subsidies were granted by the Spirituality and two by the Temporality, and not one Act for Redress of Grievances, or of other Benefit to the Commonwealth: Monopolies and other Grievances were the
Subjects

Subjects of Debate; many Matters concurred to disaffect the People, Pensions grew great as Favourites play'd their Games: The great Power of a prime Minister, the Treaty of the *Spanish Match*, the great Influence *Gondomar* had upon *English* Councils, whereby the slender Forces his Majesty had in the *Palatinate*, had their Swords padlock'd and at last withdrawn, and more Money spent in fruitless Treaties, than would have maintained Armies sufficient to recover the lost Patrimony of his Majesty's Children, which was ludicrously represented in a Farce upon the Stage at *Paris*, where a Fellow was brought in giving an Account of the King of *Bohemia's* Affairs, who being asked what Hopes there were of his being restored to his Dominions, answered, very great ones, prodigious Aids promised him, amongst the rest ten thousand Ambassadors from *England*: Some Part of the Affair of the *Palatinate* will in the following Pages be mentioned, particularly as Privilege of Parliament is concerned, as I take it from the Journal of the House of Commons of the eighteenth of King *James*. The Book of the Clerk of the House of Commons is a Record, says Lord *Coke*,^{6 H. viii. 16.} and is affirmed to be so by Act of Parliament,^{4 Inst. 231} as before mentioned in Page 353. The Journal I make use of, is a fair Copy of the Book of the Clerk of the House of

The Antiquity of National

Commons taken by a careful Hand ; I meddle with no Part of it, but such as relates to Royal Prerogative and Privilege of Parliament, and therein by way of Abridgement, mention the Sense and Purport of the Debates and Resolutions, without transcribing the Forms and Words thereof at large, but in some few Instances, where I think the very Words of the Journal are necessary.

The chief if not sole Intent of calling this Parliament of the eighteenth of King *James*, was for a Supply; but instead of that, the Parliament fell upon Grievances, having learnt by Experience, that Grievances were not to be redressed but by way of Barter, which made the Commons consider the King as a Merchant, and themselves as Country Chapmen, and would not pay their Money, till they had Delivery of Goods for it. Before I begin with this Journal, I mention some Parts of the King's Speeches before he held his Parliament of 1620.

King *James's* Speech to his first Parliament in the first Year of his Reign *Anno Dom. 1603*, was highly good and gracious, of which I transcribe a Part in the King's own Words, to shew the Difference between the Stile in his first Speech, and those made in succeeding Years.

It

It did no sooner please God to lighten his Hand and relent the Violence of his devouring Angel against the poor People of this City, but as soon did I resolve to call this Parliament, and that for three chief and principal Reasons: The first whereof is, (and which of it self, altho' there were no more, is not only a sufficient, but a most full and necessary Ground and Reason for convening this Assembly) this first Reason I say is, that you who are here presently Assembled to represent the Body of this whole Kingdom, and of all Sorts of People within the same, may with your own Ears bear, and that I out of my own Mouth may deliver unto you the Assurance of my due Thankfulness, for your so joyful and general Applause to the declaring and receiving of me in this Seat (which God by my Birthright and lineal Descent, had in the fulness of time provided for me) and that immediately after it pleased God to call your late Sovereign, of famous Memory, full of Days, but fuller of immortal Trophies of Honour out of this transitory Life: Not that I am able to express by Words, or utter by Eloquence, the vive Image of mine inward Thankfulness, but only that out of mine own Mouth you may rest assured to expect that measure of Thankfulness at my Hands, which is according to the Infiniteness of your Deserts, and to my Inclination and Ability of Requital of the same. Shall I ever? Nay,

The Antiquity of National

can I ever be able, or rather so unable in Memory, as to forget your unexpected Readiness and Alacrity, your ever memorable Resolution, and your most wonderful Conjunction and Harmony of your Hearts in declaring and embracing me as your undoubted and lawful King and Governour? Or shall it be ever blotted out of my Mind, how at my first Entry into this Kingdom, the People of all Sorts rid and ran, nay rather flew to meet me? Their Eyes flaming nothing but Sparkles of Affection, their Mouths and Tongues uttering nothing but Sounds of Joy, their Hands, Feet, and all the rest of their Members in their Gestures, discovering a passionate Longing, and Earnestness to meet and embrace their new Sovereign. Quid ego retribuam? Shall I allow in my self that which I could never bear with in another? No, I must plainly and freely confess here in all your Audiences, that I did ever naturally so far mislike a Tongue to smooth, and diligent in paying their Creditors with lip Payment and verbal Thanks, as I ever suspected that Sort of People meant not to pay their Creditors in more substantial sort of Coin. And therefore for expressing my Thankfulness, I must resort to my other two Reasons of my convening of this Parliament, by them in Action to utter my Thankfulness: Both the said Reasons having but one Ground, which is the Deeds, whereby all the Days of my Life,

I

I am by God's Grace to express my said Thankfulness towards you, but divided in this, that in the first of these two, mine Actions of Thanks, are so inseparably conjoined with my Person, as they are in a Manner individually annexed to the same, in the other Reason, mine Actions are such, as I may either do them, or leave them undone, altho' by God's Grace, I hope never to be weary of doing of them.

As to the first; It is the Blessings which God in my Person bestowed upon you all, wherein I protest, I do more glory at the same for your Weal, than for any particular Respect of mine own Reputation or Advantage therein.

The other Reason of my convening you at this time, which containeth such Actions of my Thankfulness towards you, as I may either do or leave undone, yet shall with God's Grace ever press to perform all the Days of my Life; it consists in making Laws at certain times, which is only at such times as this in Parliament; or in the careful Execution thereof at all other times: As for the making of them, I will thus far promise unto you, that I will ever prefer the Weal of the Body, and the whole Commonwealth in making of good Laws and Constitutions, to any particular or private Ends of mine, thinking ever the Wealth and Weal of the Commonwealth to be my greatest Weal and worldly Felicity;

a

The Antiquity of National

a Point wherein a lawful King doth directly differ from a Tyrant: I do acknowledge, that the special and greatest Point of Difference that is between a rightful King and an usurping Tyrant, is in this, That whereas the proud and ambitious Tyrant doth think his Kingdom and People are only ordained for Satisfaction of his Desires and unreasonable Appetites; The righteous and just King doth by the contrary acknowledge himself to be ordained for the procuring of the Wealth and Prosperity of his People, and that his greatest and principal worldly Felicity must consist in their Felicity and Prosperity. If you be rich I cannot be poor, if you be happy I cannot but be fortunate, and I protest that your Welfare shall be my greatest Care and Contentment; and that I am a Servant is most true, that as I am Head and Governour of all the People in my Dominion, who are my natural Vassals and Subjects, considering them in Numbers and distinct Ranks; so if we will take the People as one Body and Mass, then as the Head is ordained for the Body and not the Body for the Head, so must a righteous King know himself to be ordained for his People, and not his People for him; I will never be ashamed to confess it my principal Honour to be the great Servant of the Commonwealth, and ever think the Prosperity thereof to be my greatest Felicity as I have already said.

Great

There was great Harmony and Agreement between the King and this his first Parliament, wherein thirty three good Bills had the Royal Assent. But things did not go on so smoothly afterwards, the King in his Speeches using a more high and imperial Stile, not so agreeable to his Parliaments; I shall give you some Instances of the King's different Manner of expressing himself to his Parliaments and make use of his own Words.

In the Speech he made to his Parliament of the seventh Year of his Reign *Anno Dom.* ^{K. James's Works,} 1609, he says thus, *The State of Monarchy* ^{529.} *is the supremest thing upon Earth, for Kings are not only God's Lieutenants upon Earth, and sit upon God's Throne, but even by God himself they are called Gods. Kings are justly called Gods, for that they exercise a Manner or Resemblance of divine Power upon Earth. To Kings that are Monarchs, their Subjects Bodies and Goods are due for their Defence and Maintenance. That as to dispute what God may do is Blasphemy, so it is Sedition in Subjects to dispute what a King may do in the Height of his Power. I will not be content that my Power be disputed upon.*

In this Parliament a great Parcel of Grievances were presented together in the House of Commons, of which the King speaks thus, *You having one Afternoon found*
many

The Antiquity of National

many Grievances closely presented in Papers, and so all thrust up in a Sack together (rather like Pasquils, than any lawful Complaints) far against your own Orders, and divers of them proceeding from grudging and murmuring Spirits; you, upon hearing read two or three of the first Lines of divers of them, were not content with a publick Consent to condemn them, and to discharge any farther reading of them, but you also made a publick Bonfire of them. In this, I say, you shewed your Care and Jealousy of my Honour, and I sent you Thanks for it by the Chancellor of the Exchequer, a Member of your own House, who by your Appointment that same Night acquainted me with your Proceedings, and by him also I promised at that time, that you should hear more of my Thanks for the same at the first Occasion; and now I tell it my self, that you may know how kindly I take your dutiful Behaviour in this Case, but since this was a good Effect of an evil Cause, I must not omit to admonish you upon the other Part to take a Course amongst your selves, to prevent the like Accident in all times hereafter. Otherwise the lower House may become a Place of Pasquils, and at another time such Grievances may be cast in amongst you, as may contain Treason or Scandal against me or my Posterity. Then he directed the House in what Manner to inform themselves of the particular just Grievances of the People.

First

First, That you do not meddle with the main Points of Government, that is my Craft (says the King) tractent fabrilia fabri; to meddle with that were to lessen me; I am now an old King, for thirty six Years have I govern'd in Scotland personally, and now I have accomplished my Apprenticeship of seven Years here. I must not be taught my Office.

Secondly, I would not have you meddle with such ancient Rights of mine, as I have received from my Predecessors, possessing them, more majorum: Such things I would be sorry should be accounted for Grievances.

The King in his Speech in the Star-chamber, Anno Dom. 1616, says, It is Atheism and Blasphemy to dispute what God can do; good Christians content themselves with his Will revealed in his Word; so it is Presumption and high Contempt in a Subject to dispute what a King can do, or say that a King cannot do this or that; but rest in that which is the King's revealed Will in his Law.

King James was not so well in the Affections of the People as his Predecessor was; the Queen adjourned, prorogued and dissolved Parliaments in Love, and the next Meeting began with Duty, Love and Affection; thro' her whole Reign she kept Parliaments, (the Pulse of this Nation) in such a Temper, as no Signs appeared of
Anarchy

The Antiquity of National

Anarchy or tyrannical Oppression; she made not use of her Authority to the Grievance of her People; if ever she exceeded the Power given to the Crown by Law, it was in doing good for the Benefit of the Nation; if the Commons exceeded the Bounds they could prescribe to, she in a short majestic Manner reproved them and they chearfully submitted. King *James* adjourned, prorogued and dissolved Parliaments in Anger, and the next that was called, met prepossessed with Fears of the Growth of Popery and arbitrary Power: The King made long Speeches to set the Parliament right, and the Commons as long Remonstrances of their Grievances; the one as ineffectual upon the King as the other upon the Commons. King *James* established as a Principle, That tho' in Conscience and Honour the King ought to govern his Subjects with Equity, he might nevertheless in Virtue of his Power govern in a despotick Manner, and the Subjects have no Right to controul his Actions. This Maxim of the King's kept the Parliament always upon its Guard.

Journ. 2. The Parliament met at *Westminster* on the thirtieth of *January* 1620, being the eighteenth Year of the King's Reign. The King opened the Parliament with a long Speech declaring the Cause of calling the Parliament, and begins with Religion, saying

ing, *There are good Laws enough already made, if the true Intent and Execution did but follow them,* and then says upon the Treaty of the *Spanish Match*, he hath been a Martyr tortured in the Mouths of many idle Fellows, as if he intended a Toleration in favour of Popery, but he professes he will do nothing therein that shall not be honourable and for the good of Religion, will never do any thing in private, and say another thing in publick, and then continues the King, *The main Errand (to speak Truth) why I call you, is for a Supply; the States of Bohemia have expelled their Emperor and chosen my Son-in-Law for their King. Women after ten Months longing are delivered of their Burden, but I have travelled ten Years, therefore now full time to be delivered of my Wants, I have expended 130,000 l. in Treaties and Embassies, and 200,000 l. in preserving the Palatinate, and 300,000 l. besides the voluntary Contributions. In the last Parliament there came up a strange kind of Beast, called Undertakers, (a Name Journ. 7. which in Nature I abhor) which caused a Dissolution. Now you have the Advantage that I call you out of my free Motion, and my Trust is in your good Offices for the good of my Estate, &c. so I leave you.*

In the Session of Parliament of the eighth of his Reign he had a Subsidy from the Clergy, and a Subsidy and a Fifteen granted by

by the Temporality, and no other Subsidies, Tens or Fifteens, granted till this Session of Parliament in the eighteenth of his Reign, which is the Meaning of the King's ten Years Travel.

There was a Meeting of Parliament on the fifth of *April* in the twelfth of King *James*, *Anno Dom.* 1614, but neither Subsidy nor other Act passed; that Parliament being dissolved on the seventh of *June* following on Account of the Undertakers.

Journ. 8. The King's Speech being ended, Viscount St. *Albans*, Lord high Chancellor of *England*, made an Acclamation of the King, and a brief Exhortation to the House, which I transcribe to shew the Manner of Ministers addressing King *James*.

May it please your Majesty, I am struck with Admiration in Respect of your profound Discourses, with Reverence to your Royal Precepts, and Contentment in a Number of gracious Passages, which have fallen from your Majesty in your Speech. It is a Saying of Solomon somewhat dark but apt, That the words of the wise are like nails and pins fastned by the master of the building in the midst of assemblies. So in Regard of the Reverence of your Majesty's Words, they are like Nails that strike through and through, first into the Memory, then into the Hearts of the Hearers, which is the best way to imprint them in their Minds: For my self, I hold it

as

as great Commendations in a Chancellor to be silent when such a King is by, who can so well deliver the Oracles of his Mind, as for me to speak; only, Sir, give me Leave to give my Advice to the upper and lower House in two Words, *Nosce teipsum*: I would have the Parliament know it self first in a modest Carriage to so gracious a Sovereign; secondly in valuing themselves thus far as to know, now it is in them, by their chearful Dealing to procure an infinite good to themselves in Substance and Reputation at home and abroad. As there is great Expectation in the beginning of this Parliament; so I pray God, it may be as good in the Conclusion, that it may be generative, begetting others hereafter. The rest is the common Direction to choose a Speaker and present him to the King at the Day appointed, viz. the third of February, 1620.

On Monday the fifth of February, it was ordered that all the Members of the House should receive the Sacrament on Sunday next in the Parish Church at *Westminster*, and that Dr. *Usher* be intreated then to preach there.

On Tuesday the sixth of February the Speaker acquainted the House that he had received a Paper from Dr. *Graunt* and two other of the Prebends, whereby the Dean and the rest of the Canons of *Westminster* deny Leave to the House to receive the

The Antiquity of National

Communion, in their Parish Church which is their proper Land; first, because the House did not ask Leave of them; secondly, because they had made choice of a Preacher which was none of their Church: But they offered if the House would name one of their Canons to preach, they should be admitted to receive in their Church, with ordinary Bread, which was denied the House in the last Convention of Parliament.

Which Offer of the Canons of *Westminster*, the House utterly rejected, and chose the *Temple Church* for receiving the Communion and hearing the Sermon.

Then four Matters were referred to a Committee of the whole House, first, concerning Liberty of Speech; secondly, touching the Number of Papists about Town and their Insolence; thirdly, concerning a Supply of the King's Wants and the Business of the *Palatinate*; fourthly, touching the Grievances of the Subjects and Commonwealth.

As to the first, *viz.* Liberty of Speech, the Committee agreed that a Petition *de Jure* should be made to the King, declaring that the Privilege of the House had ever been to have a Freedom of Speech, and that it had been broken in the last Convention of Parliament, for that divers Members of the House were punished, and sent to the Tower for speaking freely there according to their Consciences. Touch-

Touching the second Business, *viz.* the Papists swarming and insolence in the Town, from their having more Countenance than they were wont to have, that a Petition following the Precedent of former times, should be presented to his Majesty, humbly desiring that he will be pleased that the Laws made against Recusants may be inflicted upon them, and they may be confined not to come within ten Miles of the Court, as is expressed in those Statutes: And to this end a Proclamation may be to such Effect published.

Then it was ordered that the other two Businesses concerning the Supply and the Grievances, shall be consulted by the Committee of the whole House on *Friday* next.

After the Subsidies were granted without any Appropriation, the King sent a gracious Message to the House, *viz.* ‘ I would have
‘ you signify to my loving Subjects, that
‘ their free, noble, and no Merchant-like
‘ Dealing, shall produce two notable Effects: First, my Honour and Credit abroad;
‘ secondly, it shall breed such good Blood
‘ in me, that I will strive, nay hunt to find
‘ out the Grievances of my loving Subjects,
‘ and herein I will meet them half way.’

This gracious Message from the King, indicated him to be so well pleased, that Mr. *Crue* thought it a proper Opportunity to move, that his Majesty might be pro-

One Subsidy was at this time about 82000 Pounds, and one Fifteen about 29000 Pounds. Lord *Clarendon* says a Subsidy in the best Times never yielded above 100000 Pounds, which is not a Third in the Pound as Land is taxed by the Precedent of 1693.

Journal,
31. 421.
Vol. 2.
p. 131.
4 *Inst.* 33.

There were many and great Complaints of Grievances from Monopolies and Patents dispensing with penal Laws, and many Petitions presented to the *King* against the Patents for Inns, and other illegal Patents.

Journal,
43, &c.
Camb.
Annal. 67.

The Commons resolve that the Patents for Inns are exorbitant Grievances, and order'd that no Process concerning the Patent of Alehouses shall be executed; and Sir *Francis Mitchel* the Patentee be committed to the Tower for putting the Patent for Alehouses in execution.

Camb.
Annals,
68.

The Abuse of the Registers in *Chancery* resolved by Vote of the House to be a great Grievance to the Subject.

On the tenth of *March* 1620, the King sent a Message to the House of Commons by Mr. Secretary *Calvert*, that he would be as ready as the House could desire, to remedy the Grievances which lie on his People.

On the twenty first of *March* 1720, the Patent for the sole engrossing of Wills and Inventories is by Order and Vote of the House condemned to be against Law, and a Grievance, both in the Creation and Execution.

The Antiquity of National

On the twenty sixth of *March* 1621, the Patent for granting free Warrens was by Vote of the lower House condemned.

And that the Patent of Concealments granted to Sir *John Townshend* is a Grievance in the Creation and Execution.

And that the Patent to Sir *John Townshend* impowering him to grant Tolls is a Grievance in the Creation and Execution.

An Order of the House was made that the Members that stayed in Town during the Adjournment shall sit in the House as a grand Committee for the Examination of the Abuses in Courts of Justice, and to have power to send for Persons, Papers and Records.

Of later Days, Committees have sat during Adjournments, to examine into some particular Matters limited by the House.

The Commons were sent for to the Lords House, where standing without the Bar, the Lord Keeper pronounced Sentence upon Sir *Giles Mompesson* for executing a Patent for licencing Inns; that it was judged and awarded by the Lords, That he be degraded from the Order of Knighthood, that the *King* should have all his Goods absolutely, and his Lands during *Mompesson's* Life, reserving to his Wife and Children their Titles and Interest, to stand outlawed as for a Trespass, not to be of a Jury or to be a Witness, to be excepted out of all
general

Camb.
Annals,
69,70,71.

Journal,
162,

general Pardons, to be in perpetual Imprisonment, to be fined and ransom'd at ten thousand Pounds, to be ever held an infamous Person, to lose all his Offices, and never bear any Office hereafter, not to come within twelve Miles of the King or Prince's Courts, or of any Courts of Justice at *Westminster*.

To this Sentence the *King* was pleased to add perpetual Banishment, though the Patent he executed was granted by the King, 14 *Jacobi*.

On the twenty seventh of *March* 1621, the Parliament was adjourned, and the King giving a good Approbation of our Proceedings, did, in the presence of our House, knight Serjeant *Richardson* our Speaker, Sir *Thomas Richardson*. Adjournment.

Queen Elizabeth maintain'd her Prerogative of granting Patents for Monopolies as before mentioned in *Page* 395, but granted them so rarely that the Commons complained but once.

According to the Order of the House, the Members in Town sat as a grand Committee to examine into Grievances till the seventeenth of *April* 1621, when the Parliament met again.

Mr. Sollicitor made report to the House of some of the Business done in the grand Committee and Sub-Committees during the Access.

The Antiquity of National

Cessation, and that several Bills were prepared to be laid before the House.

1. A Bill for regulating the Jurisdictions of all Courts of Justice, that one meddle not with what appertaineth to another.

2. A Bill against new Offices and Fees.

3. A Bill concerning the setting down of Days of hearing, that no Motion shall be made in the Vacation to cross the Course of Proceedings in Courts.

4. A Bill, that a Master of the Chancery shall consider and report only of matter of Fact, and not meddle with matter of Right.

5. A Bill for moderating of Fees for Orders, and the Length of Orders, and the Fee not to be above three Shillings.

6. A Bill that no *Sub-pœna* shall be taken out till a Bill be filed.

7. A Bill concerning Fees in Ecclesiastical Courts, and that there shall be a certain Fee set down for the Probate of a Will.

8. A Bill that in Administrations, the Administrators shall make true Inventories and Accounts of the Goods and Estate of the Deceased, and of all particular Expences, &c.

9. And that concerning Courts of Law and Equity, there is to be a Bill that Prisoners may not have liberty on a *Habeas Corpus* to go abroad for any long time, when they are committed for Debt, Contempt or the like.

The

The Master of the Wards reporteth what hath been done relating to Trade by the Committee during the Cessation.

Sir *Thomas Rowe* reporteth what hath been done at the Committee concerning the Lights of *Winterton-Nefs* and *Duncheon-Nefs*.

It is by Question declared and adjudged that the Patents for *Winterton-Nefs* and *Duncheon-Nefs* are both Grievances, and a Bill by Order of the House to be drawn for Reformation of the Abuses of both these Patents.

The *King* in his Speech to the Parliament on the twentieth of *April* 1621, reminds the Commons that at first opening the Parliament, Supply was declared to be one of the Reasons; he says, He expects present Assistance to enable him to re-establish his Son-in-law and Grand-children in their Estate by Treaty or Arms, and that they should not hunt after, nor snatch at Abuses, but do all for the Love of Justice, and not proceed from private Purposes or Spleen, nor abridge the Authority of Courts nor his Prerogative.

On the twenty fifth of *April* 1621; it is by Question resolved, that the Patent for sole importing Lobsters and Salmon is a Grievance.

On the twenty seventh of *April* 1621, it is by Question adjudged, that the Privy-Seal

Seal for the Fees given to the Masters of Chancery is a Grievance.

On the thirtieth of *April* 1621, a Note was deliver'd into the House of scandalous Words spoken by *Edward Floide* a Prisoner in the *Fleet*, of the *Palsgrave* and *Lady Elizabeth*, who talking of the Loss of *Prague*, did in a scornful and malicious manner say, *That now Goodman and Goodwife Palsgrave were turned out of doors*; and that he the said *Floide* had as much Right to the Kingdom of *Bohemia* as the *Palsgrave*. It is ordered, that the said *Floide* be presently sent for to answer the said Words.

Journal,
256.

Floide upon his Examination wholly denied the said Words testified against him by three Witnesses.

Mr. Secretary brings a Message to the House from the *King*, That he would not have them meddle any farther with the Baronets or Places of Honour, whereof himself is the Fountain, and would not have us go about to tie his Hands therein. His *Majesty* also understanding there is here an Order for drawing a Bill to put all Clergymen out of the Commission of the Peace, desires that we will not take away that Dignity from the Clergy that they have heretofore enjoyed, nor limit his Prerogative in that case.

The *King* being misinformed of the Intentions of the House concerning the Clergy,

gy, it is order'd that a Message be sent to the *King* touching the matter of the Commission of the Peace, and how far the House had proceeded therein.

On the first of *May* it is order'd that *Edward Floide* be returned to the *Fleet*, and to lie this Night in *Bolton's Ward*; and to-morrow Morning to ride on a Horse with his Face to the Horse's Tail, with the Tail in his Hand, to *Westminster*, and there stand in the Pillory from nine to eleven a-clock, and in like manner to be conducted and stand in the Pillory at the *Exchange* and in *Cheapside*, and fined a thousand Pounds to the *King*, and that the Speaker sign a Warrant to the Sheriffs of *London* and *Middlesex* to see this Sentence be executed.

On the second of *May* before Execution of the Sentence upon *Floide*, the Speaker saith, That it hath pleased the *King* to command a Stay of the Execution of the Punishment imposed by this House on *Floide*.

Two or three Hours after, Mr. *Chancellor* of the *Exchequer* deliver'd a Message from his *Majesty*, who hath taken care and notice of what was done here Yesterday, and saith, He giveth this House Thanks in the likeness of a *King* and of a Father, and as a Father doth desire, that our Zeal to him doth not transport us to Inconveniencies,

niencies, that he would have us first *Query*, Whether the Liberty of this House can warrant or give us power to sentence one who is no Member, nor Offender against this House or any Member of it?

Journal,
269.

Second *Query*, Whether we can or will sentence a denying Party otherwise than on Oath? That the Lords did desire Sir *Henry Yelverton*, because he was the *King's* Prisoner, and would not meddle with him till his *Majesty* had commanded him to be delivered to them, and his *Majesty* would have us to consider, whether we will not pay the like Respect to his *Majesty*, *Floide* being his Prisoner, as standing committed by his Council, he wou'd have us leave this to him, and he will be careful to punish *Floide* according to the Greatness of his Fault.

The Master of the *Wards* delivers a Record from the *King* which his *Majesty* commanded him to acquaint this House withal, and saith, that the *King* saith, That he will on view confirm what Privileges we have, and would have us rest assured of it.

Col. Rec.
651.

The Record is *Rotulum Parliamenti* 1 Hen. IV. viz. *Que les Comons ne soyent point parties aux Jugemens, que le Jugement appartient seulement aux Seigneurs, ou seulement au Roy mesme, excepté ou le Roy leur donne specialement autorité.*

Prerogative and Privilege were upon the Tenter in this Case; some Members said,
the

the King had pardoned the Party, whom the Houses of Parliament had judged; Mr. Noy, That there was no doubt but that the King may stay Execution of Judgment given in any Court, that in the Case of *Lati-mer*, the King did pardon the Offender after Judgment given by the Court of Parliament.

Sir *Edward Coke* wisheth his Tongue may cleave to the Roof of his Mouth that saith, *That this House is no Court of Record*; and he that saith, *This House hath no Power of Judicature*, understands not himself, for though we have not such Power in all things, yet have we Power of Judicature in some things, therefore it is a Court of Record. The *King's-Bench* can meddle with no real Actions, nor the *Common-Pleas* with any Business concerning the Crown, and yet are they Courts of Record; That no Liberty can be taken from any Court but by Act of Parliament, and this Record sent hither by the *King*, is no Act of Parliament, and therefore cannot prejudice our Liberty, *multi multa, nemo omnia norit*, that he knoweth, that this is a Court of Record, or else all the Power and Liberties of this House were overthrown. In his Institutes he says, ^{1 Inst.} *A Court of Record is created by Parliament*, _{p. 260.} *Letters Patents, or Prescription.*

It is order'd, that a Message be sent by word of mouth to the Sheriffs by our Usher or Serjeant, that we discharge their
 Atten-

The Antiquity of National

Attendance till we shall give them further warning.

Thursday, May 3 1621. The Speaker by Order of the House acquaints his *Majesty*, That the Sentence of the House against *Floide* for malicious Words against his *Majesty's* Children, proceeded from their Affection to his *Majesty*, that it was not the Intention of this House to exceed Precedents, nor to win any farther Power to our selves, and humbly desire, that his *Majesty* will be pleased to strengthen and countenance our Sentence, since the Grounds and Cause of it was a fervent Desire to express our humble and hearty Affections to his *Majesty* and his Children.

His *Majesty* answereth, That he would have us proceed in Business in a right Course, that we have proceeded with too much Celerity and Alacrity; that if *Floide* be guilty (as he believes he is) he deserveth a greater Punishment; he would have us set down in a Petition what we desire, because he can better judge of Writing than of Words, and would not have us claim such an Omnipotence of Power as to condemn a denying Man but by Witnesse upon Oath, and that his *Majesty* will see such Punishment inflicted upon *Floide* as we shall think enough.

May 4, 1621. Mr. Secretary deliver'd a Message, That *Floide* denies the scandalous
Words

Words he is charged with, wherefore his *Majesty* will fend him and the Witnesses to the Lords, to be examined on Oath, and that his *Majesty* expected a Petition with Precedents to justify their meddling with *Floide*, he being his *Majesty's* Prisoner.

Sir *Samuel Sandes* says we are a Court of Journal, Record, and every Court of Record has a 280. Power to give an Oath, he saith that the Ceremony of taking an Oath on a Book, is *de puisne temps*, and this was a Court of Record before that Ceremony was used in the giving an Oath: Mr. *Smith* saith if the Lady *Elizabeth* had been present and complained to the Earl's Marshal, they would have punished *Floide* without ministring an Oath to the Witnesses, for they can give no Oath.

At the Conference with the the Lords on *Floide's* Case, Sir *Edward Coke* desired their Lordships to consider, that our House is a Court of Record, and that our House hath Power to fine and imprison: That by the fifth of *Henry IV*, all menial and other 5 Hen. 4, 6. Servants of a Member of this House are free from Arrests; observe a Case of this Nature before in the Queen's time, Page 394.

Floide's Case being taken out of the Hands of the Commons by his Majesty and referred to the Lords, I shall proceed in the Account of his Case in the House of Lords, and give a short Abstract of the Proceedings

ceedings thereupon, and of the Conferences between the Houses of Lords and Commons in his Case.

Journal,
297, 306.

At the Conference between Lords and Commons, it was agreed that the accommodating the Case of *Floide*, should be left to a Committee of sixteen of the upper House and double the Number of the lower House, at which Committee it was agreed that the Sentence against *Floide* should be left wholly to the Lords, and that Protest should be entered in the Journal *in bis verbis*.

A Protestation in the House of Lords by Consent of the House of Commons, that the Proceedings lately passed in that House in Judgment of *Edward Floide*, be not any time hereafter drawn or used a Precedent to the Prejudice of either Houses, but that the Privilege of either Houses do remain and abide as before.

The Lords confirmed and agreed to the said Protestation.

A Message from the Lords desiring us to send *Floide's* Trunk of Writings to their House.

Answer is made that the Trunk shall be sent to their Lordships, and the Sergeant was ordered to carry it.

Journal,
333.

On the twenty sixth of *May*, 1621, The Lords Sentence against *Edward Floide* was that he shall be degraded from his Gentility,
ride

ride on *Monday* next from the *Fleet* to *Cheapside* on the bare Horse's Back without a Saddle, with his Face to the Horse's Tail, and the Tail in his Hand, and there stand two Hours in the Pillory, and there to be branded on the Forehead with the Letter *K*, and that on *Friday* following he shall ride from the foresaid Place in the same Manner to *Westminster*, and there stand two Hours more in the Pillory with Words in a Paper on his Hat shewing his Offence, and to pay for a Fine to the King 5000 *l.* and to be a Prisoner in *Newgate* during his Life.

*Camden's
Annals,
71.*

On the second of *June* 1621, *Floide* stood in the Pillory, with an Inscription in these Words, *viz. For ignominious and despiteful Words and malicious and scornful Behaviour against the Count Palatine and the King's only Daughter and their Children,* pinned on his Back and Breast.

Thus ended the Commons intended or pretended Compliment to the King to their great Disappointment. The King claiming him as his Prisoner, resented the Commons meddling with him without first desiring his Leave, tho' their Prosecution seemed out of Respect to the King and his Children; the whole Proceeding of the Commons proceeded from exerting their Privilege, which the King cut them short in, by interposing his Prerogative.

VOL. II.

N

The

The Antiquity of National

The Commons being thus disappointed in their Views, fell to redressing Grievances in such a peevish Manner, as to spend all the rest of the Session of Parliament in Petitions, Remonstrances, and Debates about the Privileges of their House.

In this Session of Parliament, Sir *John Bennet* a Member of the House of Commons was expelled the House for receiving Bribes, and another Member chosen in his room.

Journal,
335.

On *Monday* the twenty eighth of *May*, 1621, Mr. Secretary saith, that his Majesty hath commanded him to signify to this House, that this House must have a Recess, and that he thought it best to have it by way of Adjournment rather than by Prorogation, that the Bills not finished might not fall; his Majesty's Pleasure is that next *Saturday* shall be the last Day of Business, and the *Monday* after the Day of Adjournment, and as for Grievances his Majesty will receive our Petition, with the Particulars of them next *Saturday* at *Greenwich*, that his Majesty intends the Access shall be about *Albollantide*, and that this Recess shall be by Adjournment by way of Commission.

It is ordered by Question, that we shall send a Message to the Lords for a Conference touching the Message from the King concerning the Adjournment of the Parliament, and that the Lords be desired to join

join in a Petition to the King to continue the Session to the end of the Term.

Tuesday the twenty ninth of *May*, 1621, the Master of the Rolls maketh Report of the Conference with the Lords concerning the breaking up of the Parliament, and saith that the Lords said, that his Majesty was constantly resolved that the Parliament should break up on *Monday* next, that the Grievances are to be presented to his Majesty on *Sunday* next, and on *Monday* his Majesty will come to give his Royal Assent to those Bills that are ready for his Assent, and their Lordships expect to hear how this doth content us.

The House was so long debating of this Message before they could resolve on it, that the Lords were risen.

Upon this the House of Commons rise in a great Passion and Confusion.

Saturday the second of *June*, 1621, Sir *Edward Coke* moved that an Order of Declaration be entered here that none of those Patents of Monopolies, which have been here condemned, should be put in execution during this Adjournment or Cessation.

Sir *Edward Coke's* Report of the free Conference with the Lords, that the King had consulted with the Judges, who say that the Adjournment propounded would be no Prejudice to the Business in hand, but that all remained in *Statu quo prius*,

and that the King left it to the Lords, whether the Sitting should continue a Fortnight longer and so make it a Sessions, or be forthwith adjourned, and that the Lords give us till three o' Clock this Afternoon to return our Answer.

Journal,
972.

Though the Judges Answer to the King about the Adjournment was agreeable to all Precedents, yet so pettish were the Commons that Mr. *Alford* and other Members said that the Judges had been heretofore very wary and would not meddle to deliver their Opinions of what belonged to the Jurisdiction of a Parliament, and that they ought to be warned of it, for it were dangerous for the State and Liberty of the Subject, if the Parliament should stand on the Opinion of the Judges, for it is usual that the Parliament hath judged the Actions of the Judges, but never that the Judges have meddled with the Business or State of a Parliament, which is not to be decided by the Common Laws, but *secundum legem & consuetudinem Parliamenti*.

Monday June the fourth, 1621, the Commons made a Declaration to stand by the King with their Lives and Fortunes in supporting the Protestant Interest and recovering the *Palatinate* for the King's Children.

Ordered that this Protestation and Declaration be entered in the Clerk's Book,
and

and that every Member may have a Copy of it, that it may not only be known to the People of *England*, but also to all foreign Powers that are Enemies to the Protestant Religion and the King's Children.

During this Session of Parliament, the Commons in Justification of their ancient Privileges, produced amongst others, two Precedents to their Purpose, the one in the Reign of *Henry VI*, the other of *Queen Elizabeth's*: To which the King made Answer, that the Precedent of *Henry VI* ought not to be esteemed of any weight, he being a very weak Prince; and to the other of the *Queen*, it ought to be looked upon, only as proceeding from the Weakness of a Female Reign, which Sex is not capable of Deliberation: Well had it been for the King if his masculine Deliberations and Determinations had met with the same Veneration and Regard that the *Queen's* did.

The King advised with the Judges about Journal, what different Effect Adjournment by Com-^{365.} mission might have from the Adjournment made by the Houses, and they gave their Opinions only on the Case of the twenty seventh of *Elizabeth*, when in the Journal of that Year, it is expressed there was a Committee appointed to sit in the time of Recess, when there was an Adjournment by Commission from that *Queen* to adjourn the

The Antiquity of National

said Parliament, and notwithstanding such Commission, the Houses did adjourn themselves, and Committees sat during the Adjournment.

Mr. *Noy* said, that if the King alone do adjourn the Parliament, then it is a Determination of the Sessions. If the Houses adjourn themselves, they may meet again of themselves, but if it be an Adjournment by the King alone, then it is an end of the Sessions, and the Houses can't meet again, but on Signification of the King's Pleasure.

Mr. *Noy* farther said, that in Lord *Dyer's* time it was resolved, that if an Adjournment was by a Record, it is an end of the Sessions, but if it be by a Remembrance, it is otherwise; but it is ordinary that there is a Commission from the King to adjourn the Parliament, but the Houses do adjourn themselves, and make a Remembrance of it, and of the Continuance of the Sessions. And Mr. *Noy* moved that the Adjournment might not be on Record by the King alone, but may be made by the several Houses, for that it might otherwise breed a great Question whether the Sessions determine or no, and his Opinion was that it did determine the Sessions, if the Adjournment was by the King's Commission alone.

The King having left it to the Lords whether to have an Adjournment immediately or a Prorogation at a Fortnight's end;

end; the Lords chose a present Adjournment.

On the fourth of *June* a Commission was sent under the great Seal to the Lords, and from them sent to the Commons; this Commission was for adjourning the Parliament to the fourteenth of *November* next.

The Messengers that brought this Commission from the Lords, signified to the Commons, that their Lordships according to his Majesty's said Commission, had already adjourned their House, and also signified that it was his Majesty's Pleasure, that during the Cessation all Committees and other parliamentary Business shall rest in the same state they are, till the next Meeting.

The Messengers being withdrawn, the House of Commons would not have the Commission read, but had them called in, and the Speaker said that House would adjourn themselves according to the King's Pleasure signified by the Commission which was re-delivered to the Messengers.

Then the Speaker standing up adjourned the Parliament, saying, this House doth adjourn it self to the fourteenth of *November* next, then to meet here in this Place again in Parliament at nine of the Clock.

This adjourning by Commission from the King went heavily down with the Commons, the Right of the King to prorogue

The Antiquity of National

and dissolve a Parliament was never controverted, but his Power and Right to adjourn by Commission they were not willing to submit to, looking upon that to be an undeniable Privilege in the House to adjourn themselves.

But the Lords submitting to the King's Commission for adjourning, the Commons found themselves obliged to drop their Pretensions: And from that time King *James* took it to be his Right to adjourn Parliaments, and King *Charles I.* made use of it, and King *Charles II.* very often.

Wednesday the fourteenth of *November*, both Houses met according to the last Adjournment in their several Houses, and according to the King's Pleasure signified, adjourned themselves to *Tuesday* the twentieth of this Month; and after the Houses were set, there was a Message from the Lords for the Commons to meet them in the painted Chamber to hear a Message from the King, which was deliver'd by Lord Keeper and Lord *Digby*, giving an Account of the King's Treaties in Favour of the Count *Palatine* and the Occasion for a Supply, and his Majesty's Command to the Commons not to meddle with any State Affairs, but about the *Palatinate* and such other Matters as his Majesty should recommend to their Consideration,

Journal,
1683.

Mr.

Mr. *Alford* and some other Members express their Fear, that this Message may be afterwards made a Precedent, that the House shall meddle with no other Business but what the King shall direct, and so lose the Privilege of being a free Parliament, and the King having charged the House with meddling with Matters above their Cognizance, must proceed from a Misinformation to his Majesty by some Members of the House, and Mr. *Alford* said that in *Henry VII's* time one *Tyrrel* a Member of the House of Commons, for acquainting the King with the Debates of the House was committed to the Tower, and by an Act, he and his Posterity disabled for ever sitting or serving in the House of Commons.

Cot. Recor.
465.

4 *Inst.* 23.

The like Case was in the twenty third of Queen *Elizabeth*, when *Arthur Hall*, Esq; a Member of the House of Commons, for publishing the Debates of the House, was committed to the Tower for six Months, fined 500 *l.* and expelled the House.

Lex Con-
stitutionis.
157.

Lex Parli-
amentaria
p. 71, 89.

November the twenty ninth, twenty three Grievances were complained of in the House, and it was resolved that a Roll should be made of Grievances, and a Petition to his Majesty for Remedy of the same, and Sir *Edward Coke* moved that their Petition and the King's Answer be enrolled and recorded, according to ancient Course, and the House resolved it so to be.

Sir

The Antiquity of National

Sir *Edward Coke's* ancient Course relates to the Manner of redressing Grievances by the Commons Petition and the King's Answer which had the Force of Law, and was Statute Law from the Beginning of *Edward III*, to near the end of *Henry VI's* Reign, as in Page 158.

Sir *Edward Coke* moveth that a Petition to the King be drawn concerning Religion and making a Session, which is accordingly ordered.

The Petition represents the Growth of Popery, and the Danger of a popish Match, and humbly desires that the Prince may be happily and timely married to one of our own Religion.

Mr. Chancellor of the *Dutchy* says, the Matter of the Petition is of so high and a transcendant Nature, that he never knew the like within these Walls.

Sir *Edward Sackvil* would not have the Point, concerning the Match of our Prince with a Catholick Princess, mentioned in the Petition, for it is the Privilege of Princes to marry where they list.

Sir *Richard Weston* Chancellor of the Exchequer desireth to know, whether ever from this House there began Treaties of War, Marriage and Religion that did succeed well, or were pleasing to Kings, that instead of Remedy, we may incur his Majesty's Displeasure in dealing with things of
so

so high a Nature, without some Warrant first received from his Majesty.

Sir *Edward Coke* saith, he likes the Petition *in omnibus*.

In this Session of Parliament of the eighteenth of King *James*, Sir *Edwin Sandys* in Speeches in the House of Commons, and at Conferences with the Lords, had made Complaints of the Decay of Trade occasioned by Monopolies, and that the Monopolies were obtained by Corruption, and in relation to the Privileges of the House of Commons, he spoke with such Earnestness and Freedom, that the Master of the Wards and others of the Ministry made such Replies to Sir *Edwin Sandys's* Speeches, as plainly indicated that the King was offended at his Freedom of speech.

Journal,
360, 361,
367.

On the second of *June* 1621, Sir *Walter Earl* moved, That Sir *Edwin Sandys* might be cleared by Question in the House; and by Vote of the House it was resolved, That Sir *Edwin Sandys* is free from having given any just Cause of Offence to his Majesty or any other Person.

On the fourth of *June* the Parliament was adjourned as before-mentioned, and soon after Sir *Edwin Sandys* was committed by a Warrant of the Privy-Council for Misdemeanour.

Before the Access Sir *Edwin Sandys* was discharged by the King from his Confinement,

The Antiquity of National

ment, by Warrant bearing date the sixth of *November* 1621, Eight Days before the Parliament met according to the Adjournment, on the fourteenth of *November*.

On the twentieth of *November*, Sir *Robert Philips* observing that Sir *Edwin Sandys* had been a Sufferer during the Recess, and that he and Sir *Samuel Sandys* his Brother and some others did not appear in the House, mov'd for a Call of the House; accordingly the next Day there was a Call of the House, and the *Speaker* delivered a Letter sent him from Sir *Edwin Sandys*, wherein he signified that he was discharged from his Confinement, and that he would have attended the House had he not been very sick, wherefore he desired that the House wou'd be pleas'd to pardon his Absence.

On the twenty third of *November* Mr. *Mal-lery* desired, that Sir *Edwin Sandys's* Letter to Mr. *Speaker* might be again read, for as he remembred, it was therein mentioned, that he had been confin'd, notwithstanding he was a Member of the House, and for ought he knew, it might be for Parliament Business; he was, as all the House knew, cleared by Vote of the House for any thing he had said there, wherefore it was fitting the House should know for what he was committed.

Sir *Robert Crane* said, he thought the House would not question any thing, if
Sir

Sir *Edwin Sandys* were confined for State Business, but because there is a Murmur abroad that he was committed for Parliament Business, therefore he desired, that it might be cleared, whether he was committed for Parliament Business or not.

Sir *Dudley Diggs* said, it was well known that Sir *Edwin Sandys* had suffered, which if he knew it was for Parliament Business, he must, if he died, say that of right, we ought not to be punished for what we speak here, other than by the House.

Mr. Secretary *Calvert* said, That though Journal, he had no Commission, yet since he per- 400. ceived the House strike at that Knot, he will assure the House, that Sir *Edwin Sandys* Camb. Annals, 75- was not committed for any thing said or done in Parliament.

But the House was not satisfied with Mr. Secretary's Account, but thought he equivocated; and many said, they were not satisfied that Sir *Edwin Sandys* was not committed for Parliament Business.

The Secretary might have satisfied the House if he had said for what he was committed, if it was not for Parliament Business, he should have said for what.

Sir *Henry Vane* moved, that Mr. Secretary's Protestation that Sir *Edwin Sandys* was not committed for any thing said or done in Parliament, might be enter'd in the Clerk's Book, which accordingly was enter'd.

On

The Antiquity of National

On the first of *December*, Mr. *Spencer* renewed the Debate about Sir *Edwin Sandys's* Confinement, express'd himself not satisfied with Mr. Secretary's Protest, he being a Party in the Commitment, could not give full Satisfaction in the point: He said it was against the ancient Liberties of the House, that they should be Parliament-men in the Morning, and none in the Afternoon: He desireth that a Messenger be sent to Sir *Edwin Sandys* to require him as a Gentleman to send word truly whether he was confined for Parliamentary Business or not.

Mr. *Mallary* said a Parliament-man ought not to be imprisoned or confined for other than Felony, Murder, or Treason, and desires Sir *Edwin Sandys* may be sent for by some Members of the House.

Mr. Chancellor of the *Dutchy* said it is an easier matter to raise an Inflammation by the specious Title of Privileges, than to allay it again; that the Apprehensions of the King concerning the Commitment of Sir *Edwin Sandys* were very great, and Kings Hearts are inscrutable; that Sir *Edwin* was innocent of what he was examined for, he desireth that we will not any farther stir in the Cause of this Commitment, it having been only for some Apprehensions in his Majesty.

Sir *Robert Philips* saith if we have any Privileges in the House, we have them also
out

out of the House during the Parliament, and he desireth we will send for Sir *Edwin Sandys* presently to come up if he be able by any Means, and when he cometh up, that then we should demand of him a Relation of the true Cause of his Commitment.

It is ordered that Sir *Edwin Sandys* shall be presently sent for to come up.

Sir *Henry Withrington* desireth that if Sir *Edwin Sandys* be not able to come hither, that then he make a true Declaration by writing of the Cause of his Commitment this last Summer.

Sir *Samuel Sandys* said that when Jealousies are risen from Princes of Subjects, it is fit there be an Examination made by the King, he would not have us barr the King of such Privileges, for it was fit his Brother Sir *Edward Sandys* should be confined till he was examined, that he might speak only his own Thoughts. He saith he received a Letter lately from his Brother Sir *Edwin Sandys* excusing his Absence, that though his Mind and Desires carried him hither, yet his Body was not able to convey it self to the House; he desireth that we will desist to question any more herein till his Brother himself come up, which he will do as soon as he hath Strength.

It is ordered that Sir *Edwin Sandys* shall be presently sent for to come and attend the Service of this House, and if he be
not

not able to come up, that then he set down in a Declaration, whether he were examined or committed for Parliament Business or no, and that * Sir *Peter Hayman* and Mr. *Mallery* are appointed by the House to go to Sir *Edwin Sandys* with this Message on *Monday* next.

* *Hayman*
in *Cambd.*
Annals 75.

You'll find in the Sequel that there was a Stop put to farther Enquiry after the Cause of the Commitment of Sir *Edwin Sandys* by the King's Letter to the Speaker, and the Diffolution of the Parliament soon after it.

Journal,
492.

Sir *Edward Coke* and others in their Speeches desired the House to go on and proceed in debating about Grievances, and the Privileges of the House; and maintained that Members that had been cleared by the House, for Expressions disliked by the Ministers, were not to be prosecuted by Order of the Privy-Council or otherwise; and that the Privileges of the People were confirmed by *Magna Charta*, and not then originally granted, they being their ancient Inheritance, as appears by the Words there, *libertates suas*, which is expressive of being theirs before.

9 H. iii.
cap. 1.

2 Inf. 3.

Journal,
471.

4 H. viii. 8.

4 Inf. 9.

Mr. *Mallet* said that a Member of the House of Commons during the Parliament, might not be sued by the King or any other, which he proved by a Statute of *Henry VIII*, and Lord *Coke* in his Institutes says the Statute

tute

tute is in Affirmance of and declaratory of the ancient Law and Custom of Parliament.

Mr. *Carville* says, tht he thinketh no Journal, Parliament-man ought to be sued in the 47. 73. Star-Chamber, nor in any Court but the Parliament during the Parliament time : If a Parliament-man may be sued in the Star-Chamber, then all the Members or the best Members of the House may be drawn from the Business of this House to answer a Riot or any other Business there, for there all Bills are exhibited in Mr. Attorney's Name on Behalf of the King, and he believeth it against the Privileges of the lower House.

Mr. Secretary said he had a Message from the King, which the House ordered him to deliver in Writing, which was *in his Verbis*.

‘ His Majesty remembring that this House
 ‘ was desirous of a Session between this
 ‘ and *Christmas*; whereupon it pleased him to
 ‘ signify to us, that we should have Content-
 ‘ ment therein, and that there should be a
 ‘ Session if we our selves were not in Fault,
 ‘ taking now notice that we forbear to pro-
 ‘ ceed with any Bills till the Return of the
 ‘ Messengers lately sent to his Majesty; he
 ‘ hath enjoined me to command the House
 ‘ in his Name not to lose time in their Pro-
 ‘ ceedings for preparing good Laws in the
 ‘ mean while, in Consideration of the so near
 ‘ Approach of *Christmas*; and that his Ma-
 VOL. II. O ‘ jesty

‘ jesty hopes we will not take upon us to
 ‘ make a Recess in Effect, tho’ not in Shew,
 ‘ without his Warrant’: Which are the Words
 of the Message delivered in Writing.

Sir *Roberts Philips* said if we proceed on this Message with Bills, we endanger all our Liberties, for then we shall never hereafter proceed but in such Business and in such Manner as the King shall command; and we are by this Message in such a Dilemma, as we must either disobey the King’s Command, or for ever lose our own Privileges.

Mr. *Thomas Crew* said, that our Thoughts are so distracted by these many sharp Messages from his Majesty, as we are not fit to pass any Bills at this time.

Mr. *Glanville* said, that if we now go on according to this Message and proceed with Bills, then next we shall have Command to go on with Grievances, and then with this and that Bill, and then with that Grievance, and so hereafter we shall do nothing but what the King commands, and proceed with no Business but we shall have a Command for it from the King. He would have a Committee to consider hereof, and he believeth that this Message from the King, proceedeth from a Misinformation.

*Lex Parli-
 amentaria,*
 273.

Freedom from Suits and Arrests is a Privilege the Members are so tenacious of; that a Member hath been refused Leave to wave his Privilege, and allow himself to be sued,

sued, during the Parliament; because the Privilege is not so much the Person's as the House's. Therefore when any Person is brought to the Bar of the House for any Offence by Breach of Privilege of a single Member, the Speaker usually charges the Offender in the Name of the whole House, as a Breach of the Privilege of the whole House.

Sir S.
D'Ewes
Journal,

In Henry VIII's time a Burgess being arrested during the Parliament, the King gave them Leave to release him and to punish the Offenders: The Sheriffs of London they committed to the Tower, some to *Little-Ease*, and some to *Newgate*.

Lex Parli-
amentaria
275.

On Tuesday the fourth of December, 1621, Mr. Secretary delivered a Letter from the King to the Speaker, directed to our trusty and well-beloved the Speaker of our Commons House of Parliament.

Journal;
452.

Master Speaker, We have heard by divers Reports to our great Grief, that the far Distance of our Person at this time from our high Court of Parliament (caused by our want of Health) hath emboldened some fiery and popular Spirits in our House of Commons, to debate and argue publicly in Matters far beyond their Reach and Capacity, and trenching on our Prerogative Royal: You shall therefore acquaint that House, that none therein shall henceforth presume to meddle with any thing concerning our Government

The Antiquity of National

or Mysteries of State, not to speak of our Son's Match with the Daughter of Spain, nor to touch the Honour of that King. And whereas we hear they have sent a Message to Sir Edwin Sandys to know the Reason of his late Restraint, you shall in our Name resolve them, that it was not for any Misdemeanor of him in Parliament, and that we think our self very free and able to punish any Man's Misdemeanor in Parliament, as well during their Sitting as after, which we mean not to spare hereafter upon any Man's insolent Behaviour there; and if they have already touched on any of these Points, which we have here forbidden, in any Petition to be sent to us, it is our Pleasure that you shall tell them, that except they reform it before it comes to our Hands, we will not deign the Hearing or Answering of it. Given at our Court at Newmarket, the third of December, 1621.

It is ordered that a Post by Mr. Secretary's Means shall be presently sent after the Messengers of the Petition to stay them.

Wednesday the fifth of December, 1621, it is ordered that the Members of this House may have Copies of our Petition and of the King's Letter.

A Committee appointed to draw a Declaration to his Majesty of the Proceedings of the House in the Petition intended to be sent to his Majesty, and also concerning the Privileges of the House. The Committee

mittee to have the King's Letter and the Petition for their better Information.

Thursday the sixth of *December*, 1621, ^{Journal,} another humble Petition drawn up and ordered to be presented to his Majesty by the Messengers appointed to carry the former Petition, begging of the King to receive their former Petition which contained nothing but what they humbly conceiv'd was directed by his Majesty's Speech and Messages to be under their Consideration, and humbly begged of his Majesty not to abridge them of their ancient Right of Freedom of Speech in Debate, and other Parliament Rights and Liberties, their undoubted Right and Inheritance received from their Ancestors, without which they could not truly discern things in Question before them, nor truly inform his Majesty.

This Petition ordered to be presented to his Majesty, and the former Petition if his Majesty will please to receive it.

Monday the tenth of *December*, 1621, Sir *Edward Coke* saith, that in the Parliament Roll of the second of *Henry IV* is a Petition to the King, that because it might happen that some of the Commons to please the King and advance themselves, might relate some things there debated of, before it was determined, discussed, or accorded of by the Commons, that it would please his Majesty to give no Credit to such Reports.

Cot. Recor.
405.

The Antiquity of National

Answer from the King was, that it was his Will that the same Commons should have free Deliberation and Advice to debate of all things, for the Advancement and Honour of the King and of all the Realm, and that he would not hear or give Credit to any such Relation, till it was sent him by the whole House.

This Record is delivered into the House and ordered that it shall be entered here in the House in *French* and *English*, and that every one that will shall have Copies of it.

Friday the fourteenth of *December*, 1621, Mr. Chancellor of the Exchequer presented to the House the King's Answer to the apologetical Petition presented to his Majesty by twelve of the Members of the House, which being very long, I shall give an Abridgement of it, mentioning in short the most material Parts of it.

Journal,
479.

‘ We must here begin in the same Fashion that we would have done if your first
 ‘ Petition had come to our Hands before
 ‘ we had made a Stay thereof, which is
 ‘ to repeat the Words of the late Queen,
 ‘ used by her in her Answer to an insolent
 ‘ Proposition made by a *Polonian* Ambassador to her, that is, *Legatum expectabamus,*
 ‘ *Heraldum accepimus,* instead of Thanks
 ‘ for our Proclamation of Grace, Care of
 ‘ *Ireland* at your Desire and our gracious
 ‘ Be-

Behaviour, &c. we hear great Complaints
 of the Danger of Religion within this
 Kingdom, and thereby as Representatives
 raise Fears in the Body of the People,
 contrary to your Duty; you tax us with
 trusting to partial Informations, we wish
 you to remember we are an old and ex-
 perienced King, needing no such Lessons,
 being the freest of any King from hearing
 or trusting to idle Reports, which some
 of your House that are nearest us can bear
 Witness to you, if you'd give as good
 Ear to them, as you do to some tribunitial
 Orators; you presume to give us your Ad-
 vice concerning the Match of our Son
 with some Protestant Princefs, you dissuade
 us from his Match with *Spain*, urging
 us to a present War with that King,
 we find a Number of our Subjects so
 pamper'd with Peace, as they are desirous
 of change, tho' they know not what;
 your intermeddling in Parliament in Mat-
 ters of Peace or War and Marriage of
 our dearest Son, would be such a Dimi-
 nution to us and to our Crown in foreign
 Countries as would make any Prince ne-
 glect to treat with us, either in Matters of
 Peace or Marriage, except they might be
 assured of the Assent of Parliament. As
 to Religion you may rest secure that we
 will never be weary to do all we can for
 the Propagation of our Religion and re-
 pressing

Sir Edw.
 Coke and
 some
 others.

The Antiquity of National

' pressing of Popery; but the Manner and
 ' Form you must remit to our Care who
 ' can best consider of Times and Seasons:
 ' We cannot allow the Stile you give
 ' your Privilege, calling it your ancient
 ' undoubted Right and Inheritance, but
 ' could rather have wished that you had
 ' said that your Privileges were derived
 ' from the Grace and Permission of our
 ' Ancestors and us, for most of them grew
 ' from Precedents, which shews rather a
 ' Toleration than Inheritance. Yet we
 ' are pleased to give you our Royal Assu-
 ' rance, that as long as you shall continue
 ' to contain your selves within the Limits
 ' of your Duty and Respect to us, we will
 ' be as careful to maintain your lawful Li-
 ' berties and Privileges as ever any of our
 ' Predecessors were. To conclude then,
 ' since we have so largely expressed the
 ' Sincerity of our Meaning to you, we re-
 ' quire you to go on chearfully and to use
 ' all convenient Diligence to prepare good
 ' Laws for us to pass, that the People may
 ' see the Care that both we and you have
 ' for the good Government of the King-
 ' dom: If there be not a Session before
 ' *Christmas* it shall be your Fault; above
 ' all beware by your Waywardness to give
 ' our Childrens Adversaries Cause to insult
 ' upon them, upon the Rumour that shall
 ' be spread abroad of a Distraction between
 ' us

‘ us and our People, whereof ye are the
 ‘ representative Body. At our Court at
 ‘ *Newmarket* the eleventh of *December*, 1621.

It is ordered that all the Members of the House may have, if they will, Copies of the King’s Answer to our Petition.

The King would not receive the Petition mentioned in Page 458, charging the Commons with aiming in that Petition, at the highest Points of Sovereignty.

Mr. Chancellor of the Exchequer saith, he hath to deliver by Word of Mouth three Messages from the King to this House.

First, that his Majesty doth appoint *Saturday* come Sevensnight for a Conclusion of the Session and commendeth particularly the Bill for Continuance and Repeal of Statutes, and till *Friday* we may dispatch Bills and other Business of the House. Secondly, concerning the Pardon, wherein his Majesty is desirous to give us Content. Thirdly, that the King is desirous that if *Goldsmith* hath offended the House he should be punished.

Mr. Secretary saith it is the King’s Plea- Journal,
 sure that we proceed with *Lepton* as well 487.
 as *Goldsmith* if he hath offended against the House.

Mr. Noy saith our Liberties and Privileges are confirmed to us by *Magna Charta*, not as a new Grant of Liberties, but a Confirmation of our ancient Right to them.

It

The Antiquity of National

It is ordered by Question that a Committee of the whole House shall take into their Consideration all things relating to the Privileges of this House, and it shall sit on Monday next.

Monday the seventeenth of December, 1621, Mr. Secretary saith he hath a Message from the King to this House.

The King's Letter to Mr. Secretary Calvert being long I abridge it, taking in short the material Substance of it.

Jacobus Rex.

Right trusty and well-beloved Counsellor, We greet you well, we are sorry to hear that notwithstanding our reiterated Messages to our House of Commons to go on with the Business, to make a Session before Christmas, they have made more Delay, in appointing a Committee to consider of our Answer relating to their Privileges. Our Pleasure therefore is, that you shall in our Name tell them, that we are so loath to have time mispent, that we are contented to descend from our Royal Dignity so far as to explain our Meaning in our Answer, wherein we told them that we would not allow them to stile their Privileges their ancient and undoubted Right and Inheritance, but could rather have wished they had said their Privileges were derived from the Grace and Permission of our Ancestors and us, for most of them grew from Precedents which shew rather a Toleration than Inheritance: The plain

plain Truth is, we cannot endure our Subjects to use such anti-monarchical Words to us, concerning their Liberties, except they had subjoined they were granted to them by the Grace and Favour of our Predecessors; but as our Intention was not meant to deny them any lawful Privileges, that ever the House enjoyed in our Predecessors times, so we hope our Posterity will imitate our Footsteps therein; we confess our self to be bound to maintain them in their Rights, and in Grace we are rather minded to increase than infringe any of them, if they shall so deserve at our Hands: Therefore let them go on chearfully in their Business, rejecting the curious Wrangling of Lawyers upon Words and Syllables. Given at our Court at Royston the sixteenth of December, 1621.

Sir Edw.
Coke and
others.

It is ordered that this Letter from his Majesty now read shall be entered in the House, and that every one that will may have Copies thereof.

Notwithstanding the King's explaining himself so fully in his Letter, yet a Committee of the whole House was ordered to consider of all Matters and things concerning the Liberties and Privileges of the House and all things incident thereunto.

It is ordered by Question that the Committee of Grievances shall sit this Afternoon.

It is ordered that the Message delivered here by Mr. Secretary from the King for
Liberty

The Antiquity of National

Liberty of Speech and all Matters incident thereunto, shall be brought to the Committee for Privileges to sit To-morrow Morning.

Journal,
501.

Tuesday the eighteenth of *December*, 1621, the Speaker saith he hath received a Letter from the King, whereupon the House commanded him to read it.

Jacobus Rex.

Master Speaker, Whereas at the humble Suit of our House of Commons, we condescended to make this Meeting a Session before Christmas, and by Letter to our Secretary to explain our self in the Point of maintaining all lawful Privileges to our said House, which have not had the wished Effect; we have thought good once more clearly by this to impart our Mind to them, that we have an earnest Desire to make this a Session, to the end our Subjects may have some Taste as well of our Grace and Goodness towards them, by our free Pardon and good Laws to be passed, as they have had, both by the great and unusual Example of Justice since this Meeting, and the so many Eases and Comforts given unto them by Proclamation. And therefore calling to mind that the passing the Subsidy, an Act for Continuance of Statutes, and the Pardon, are the three pressing Businessses to be effected before the end of the Sessions; we wish them, that as we have given Order for the Pardon to go on with all Expedition,

petition, so they presently go in hand with the Act for Continuance of Statutes. As for the Subsidy tho' time presseth much, yet if they find it may not now be conveniently done, we will not make that any Impediment to the Good we desire our People should feel by making this a Session: Thus much we thought good to give them to understand, and withal to assure them, that if they shall not apply themselves instantly to prepare the aforesaid things for our Royal Assent against Saturday next, we will without any farther Answer from them, construe their Slackness, that they desire not a Session. Given at our Court at Theobalds, 17 Dec. 1621.

To our trusty and well beloved Sir Thomas Richardson, Knt. Speaker of our Commons House of Parliament.

The House resolved, that this is a gracious Letter, and that we hold it fit to give his Majesty Thanks for it. Journal, 502, 503.

It is order'd, that the former Committee of the whole House appointed to consider of the Privileges of the House, shall also consider of the best Course to give his Majesty Thanks for his gracious Letter, and Satisfaction that we cannot go on with Business for a Session at this time.

The Committee deliver'd to the House an Address of Thanks for his Majesty's Letter, and their Inability in so short time

The Antiquity of National

time to prepare Business for a Session, with Promise at the Re-access to perfect such things as are in Preparation with all Diligence.

Ordered, That the Address be presented to his Majesty at *Theobalds* this Afternoon, by four Members of the House.

As soon as the Messengers were gone out of the House with the Address, the Speaker going out of the Chair, the grand Committee fell into debate of the Privileges of the House.

Sir *Edward Coke* would not have us meddle with Peace, War, or Marriage, but appoint a Sub-committee to consider of Grievances.

December 18th, 1621, the Sub-committee bring a Draught of a Protestation to the Grand Committee, the Substance whereof is;

The Commons assembled in Parliament, being justly occasion'd thereunto, concerning sundry Liberties, Franchises and Privileges of Parliament amongst others not herein mentioned, do make this Protestation following: ' That the Liberties, Privileges, Franchises and Jurisdictions of Parliament are the ancient and undoubted Birthright and Inheritance of the Subjects of *England*, and that the arduous and urgent Affairs concerning the King, State, and the Defence of the Realm, and of
' the

the Church of *England*, and the making
 and Maintenance of Laws and Redress of
 Mischiefs and Grievances which daily
 happen within this Realm, are proper
 Subjects and Matter of Council to be de-
 bated in Parliament, and that in the
 handling and proceeding of those Busi-
 nesses, every Member of the House hath,
 and of Right ought to have Freedom of
 Speech to propound, treat, reason and
 bring to Conclusion the same; that the
 Commons in Parliament have like Liber-
 ty and Freedom to treat of those Mat-
 ters in such Order as in their Judgments
 shall seem fittest, and that every Member
 of the said House hath like Freedom from
 all Impeachments, Imprisonment and Mo-
 lestation (other than by Censure of the
 House it self) for or concerning any Bill,
 speaking, reasoning or declaring any Mat-
 ter or Matters touching the Parliament
 or Parliament Business, and that if any
 of the said Members be complained of
 and questioned for any thing said or done
 in Parliament, the same is to be shewed
 to the King by the Advice and Assent of
 all the Commons assembled in Parlia-
 ment, before the King give credence to
 any private Information,

The *Speaker* being in the Chair,

It is order'd by Question in the House, Journal,
 that this Protestation shall be here enter'd 108.
 in

The Antiquity of National

in the Book of the House, and there to remain as of Record; and accordingly it was here enter'd, the House sitting, between five and six of the Clock at Night by Candle-light.

Wednesday, December 19, 1621, Mr. Chancellor of the Dutchy reporteth (in answer to the Petition of Thanks and Excuse) the King's Answer:

That he was sorry that this could not be made a Session; that the House knew there was no Fault in his Majesty, who (observing the needless Impediments upon which we took occasion to stay our Proceedings) had often admonished us not to lose time; but since the House conceived the Straitness of time (which our selves had drawn upon us) was such as it would permit nothing to be done at this time, his Majesty said he had given order to adjourn the Parliament till the eighth of *February* next. His Majesty likewise said, he could not omit to tell us, he expected other Thanks from the House than we sent him at this time, namely for his gracious Promises to be as careful to maintain our Privileges as his Majesty's own sovereign Prerogative, first contained in his Answer to our Petition, and afterwards as clearly explained and enlarged by his Majesty's next Letter to Mr. Secretary *Calvert*, as his Wit, for our Safety, Satisfaction and Advantage, could possibly devise.

Mr.

Mr. Chancellor of the Dutchy added withal that the King seemed well pleased and said, that our Petition was mannerly and a well penned Petition.

It is order'd that *Goldsmyth* shall be bailed Journal,
till the next Access, and that *Lepton* shall be 509.
here at the next Access, and both of them
to attend *de die in diem*, and that Mr. Secretary shall desire the King from the House, that *Lepton's* Patent be not executed.

Mr. *Glanville* would not have us desire the King to hinder the Execution of *Lepton's* Patent, lest that may hereafter debar us of our Privilege to hinder the Execution of a Patent.

Hereupon, and on farther Debate, the Precedent Order is alter'd, and it is order'd, that Mr. Secretary (taking notice of the Inclination of the House) shall move the King as from himself to suspend the Execution of *Lepton's* Patent.

It is order'd that Dr. *Lamb* and Dr. *Cradock* two Officials may come at the Access to defend themselves, when the House intend to punish them for Extortion.

Order'd, that Sir *John Boucher*, Sir *Ferdinando Gorge*, and other Patentees appear here at the next Access.

Order'd, that Mr. Treasurer shall as of himself (taking notice of the Inclination of the House) acquaint the King with our

The Antiquity of National

Desire, that the Execution of the Patent for Glassess may be suspended till our next Access.

Order'd, that all Bills that are in the Committee's Hands, shall be deliver'd to the Clerk to be put in order against our next Access.

Mr. Justice *Winch* and Justice *Jones* bring from the Lords his Majesty's Commission to adjourn the Parliament to the eighth of *February*, and they signify that the Lords have according to that Commission adjourned their House.

Our Answer is, that this House taketh notice of his Majesty's Commission, and is resolved to adjourn it self to the eighth of *February*, not naming when we will adjourn the House.

It is order'd that a Committee of about eight Members shall meet at the Speaker's House to peruse the Clerk's Book.

Camb.
Ann. 77.

Than the House adjourned to the eighth of *February* next. Sir *Edward Coke* said, the King makes a Prorogation, but this House adjourns it self.

On the sixth of *January* 1621, his Majesty's Proclamation for dissolving the Parliament came out, which being published in several Tracts I shall transcribe only some few remarkable Parts of it, that have relation to the Messages and Letters from the King, and the Addresses, Petitions, Orders

ders and Debates of the Commons before mentioned in this History.

‘ Albeit the assembling, continuing and ^{Journal,}
‘ dissolving of Parliaments be a Prerogative ^{515.}
‘ peculiarly belonging to our Imperial
‘ Crown, yet according to our Custom,
‘ we have thought fit to acquaint our good
‘ Subjects with some Proceedings moving
‘ us to this Resolution.

‘ This Parliament was called for making
‘ good Laws, for better settling of Peace
‘ and Religion, and restoring our Children
‘ to their ancient and lawful Patrimony,
‘ for which a Supply of our Treasury was
‘ necessary. This Parliament began in *Ja-*
‘ *nuary* last, proceeded some Months with
‘ such Harmony between us and our Peo-
‘ ple, as cannot be parallel’d in any for-
‘ mer time. And tho’ after their first Recess
‘ at *Easter* they mispent a great deal of their
‘ time, rather upon enlarging the Limits
‘ of their Liberties, than upon framing
‘ good and profitable Laws, yet we gave
‘ them time and scope for their Parlia-
‘ mentary Proceedings, prolonging the Ses-
‘ sion to the fourth of *June*, and then made
‘ the Recess by Adjournment to preserve
‘ the Business prepared, and gave notice of
‘ it aforehand that they might set in or-
‘ der their Business; Our Grace in this
‘ point was so ill entertained by some who
‘ spread Jealousies into others, and there-

The Antiquity of National

' by a Discontent in the House, for be-
 ' ing adjourned without passing Bills, yet
 ' made not their Address to us, but de-
 ' sired a Conference with the Lords, and
 ' at the Conference the twenty ninth of
 ' *May*, under colour of desiring to petition
 ' us for some further time to perfect and
 ' pass some special Bills, were embolden'd
 ' not only to dispute, but to refel all the
 ' Reasons we had given for the Adjourn-
 ' ment, and took inordinate Liberty to treat
 ' of our high Prerogative, and of sundry
 ' things that without our special Direction
 ' were not fit Subjects to be treated of in
 ' Parliament, and not regarding our re-
 ' peated Admonitions to them, to finish
 ' some useful Bills, they either sat silent, or
 ' spent their time in disputing of Privi-
 ' leges, and descanting upon Words and
 ' Syllables of our Letters and Messages; and
 ' although we had given them full Assu-
 ' rance that we would be as careful of the
 ' Preservation of their Privileges as of our
 ' own Royal Prerogative, and that we ne-
 ' ver intended to deny them any lawful
 ' Privileges that House ever enjoyed in our
 ' Predecessors times, and that we would
 ' transmit the Care of them to our Poste-
 ' rity, confessing ourselves in Justice to be
 ' bound to maintain them in their Rights,
 ' and in grace that we were rather minded
 ' to increase than to infringe any of them.
 ' An

And altho' by our Letter to their Speaker
 we advised them to proceed to make
 this a Session, and altho' we had given
 order for the Pardon to go on, and fig-
 nified our Willingness that rather than
 time should be mispent, they might lay
 aside the Thought of the Subsidy and go
 on with the Act for Continuance of Sta-
 tutes, and the general Pardon. Yet all this
 prevailed not to satisfy them either for
 their pretended Privileges, or to persuade
 them to proceed with Bills; they proceeded
 to carve for themselves, and in an unsea-
 sonable Hour, and a very thin House, con-
 trary to their own Custom in all matters
 of Weight, conclude and enter a Protesta-
 tion for their Liberties, in such ambiguous
 and general Words, as might serve for fu-
 ture times to invade most of our inse-
 parable Rights and Prerogatives annexed
 to our Imperial Crown, enjoyed by our
 Progenitors and by our late Predecessor
 the renowned Queen *Elizabeth*, an Usur-
 pation that the *Majesty* of a *King* can by
 no means endure. Therefore whereas the
 Assembly of Parliament was by our Com-
 mission adjourned to the eighth of *Febru-*
ary next, we minding not to continue
 the same any longer, to prevent needless
 Travel of the Prelates, Noblemen, Knights,
 Citizens and Burgeses of the same Par-
 liament, have thought fit to signify this

‘ our Resolution, with the Reasons there-
 ‘ of, &c.

Given at our Palace at *Westminster*, the
 sixth Day of *January* in the nineteenth
 Year of our Reign, of *Great-Britain*,
France and *Ireland*.

Journal,
 521.

Soon after the Proclamation for dissolving the Parliament, the King publishes a Declaration more particularly and largely expressing his Reasons for dissolving the Parliament, which being published in other Histories, I shall transcribe no more of it than such Part as refers to the Royal Messages and Letters to the House of Commons, and to their Addresses, Petitions, Protestations and Debates.

His Majesty's Declaration touching his Proceedings in the late Assembly and Convention of Parliament abridged.

Having of late upon mature Deliberation, with the Advice of our Privy-Council, by Proclamation of the sixth of this Instant *January* dissolved our Parliament, finding the Bounds of a Proclamation too straight to contain and express the boundless Affection we bear to our good and loving People, are pleased hereby to enlarge our self in a more full and plain Expression of those Letters and Messages that passed

passed from us to the Commons in Parliament. For as in general the great Actions of Kings are done as upon a Stage, obvious to the publick Gaze of ev'ry Man; so are we not willing that the Truth of this particular, concerning our own Honour and the Satisfaction of our Subjects should be represented to all Men without Veil or Covering, being assured that the most Plainness and Freedom will be most advantageous, having in this and all our Actions ever affected such Sincerity and Uprightness of Heart, as were we all transparent, and that Men might readily pass to our inward Thoughts they should there perceive the self same Affections which we have ever professed in our outward Words and Actions.

The Commons having given us some Shew of their Intention to give us a Supply to enable us to support our Children in their Inheritance, we rested with Patience for the time of their Performance; but before their Resolution was reduced into a formal Act or Bill, some discontented Persons endeavouring to clog the Good-will of the Commons with their own unreasonable Ends, fell to dispute in the House our high Prerogative, namely of the Match of our Son the Prince, of making War with foreign Princes our Allies, all which they cover'd with the Cloak of Religion,

The Antiquity of National

ligion, and with the fair Pretence of a dutiful Petition to be preferr'd to us; we understanding right well that those Points were not disputable in Parliament without our own Royal Direction, being of our highest Prerogatives; therefore to nip this springing Evil in the Beginning, we directed our Letters to the Speaker of that House the third of *December* 1621, as in Page 467.

Which Letters being read in the House, were so far from reforming their intended Petition, which containeth those Points by us forbidden, that they resolved to send to us the same together with another Petition justifying the former, notwithstanding our forbidding them in our said Letter to send the former Petition. Those Petitions being sent to us to *Newmarket*, the House either sat silent or proceeded not in any Business of Importance, purposing so to continue till the Return of their Messengers with our Answer; which we understanding, being desirous to have the time better husbanded, required our Secretary to deliver a Message unto them for this Purpose, as in Page 469.

This Message was so far from working that good Effect which we did most justly expect, that contrariwise some captious and curious Heads took Exceptions thereat, as tending to the Breach of their Privileges, by commanding them to proceed with Bills,
tho'

tho' we thereby neither designed any particular Bills for them to proceed with, nor yet forbad any other parliamentary Proceedings; and with such other undutiful Strains of Wit, they spun out the time untill the Return of their Messengers, who being come to *Newmarket* presented both the Petitions to us; who well knowing beforehand the Effect of the former, and then observing the Contents of the latter, and finding from both, that they did reflect upon our Person and Government, fundry causeless Aspersions, and thereby our Royal Prerogatives were invaded and assailed, after an Admonition to beware of meddling therewith, we returned to them our Answer the eleventh of *December*, 1621, as in Page 470.

This Answer being given at *Newmarket* on *Tuesday* the eleventh of *December*, and returned to the House on *Friday* the fourteenth of that Month, some carping Wits that were more inclinable to pervert and wrest our Words unto a Sense contrary to our Meaning than to do any good Office between us and our People, began to take Exception at some Words concerning their Privileges towards the end of our said Answer, that thereby their Privileges were denied and infringed, and by their Example others of more moderate and better Temper, were drawn into some Doubts and Jealousies which occasioned much Discontentment

ment in the House, which coming to our Ears, and being to omit nothing on our Part that might assure the Commons that we meant nothing less than to violate their Privileges; for Explanation of our true Intent in the former, we wrote our Letters directed to our Secretary the sixteenth of *December, 1621*, as in Page 474.

Our reiterated Messages pressing them to husband the shortness of time, were so far from prevailing with them, that we had neither good Answer nor Obedience, yet the continual Care we had that this meeting should not dissolve without some Fruit for the publick good; made us address another Letter to the Speaker the seventeenth of *December, 1621*, as in Page 476.

Thus having at last (as we hoped) by these Means scattered and dispersed those Mists and Vapours raised about their Privileges, the House resolved on *Tuesday* the eighteenth of *December* to return Thanks to us, and therewith an Excuse for not making a Session and passing Bills, both contained in a Petition in Writing, as in Page 477.

This we accepted graciously, and returned them an Answer by their own Messengers, as in Page 480.

Which Message was accordingly delivered the next Morning in the House of Commons, but while we were busied at *Theobalds*
in

in receiving their Petition and returning this Answer agreeable to our Grace and good Intention towards them, these mutinous and discontented Spirits, never giving over their wicked Purpose, began a-new to stir the Coals of Discontentment amongst them, and making them believe their Privileges were yet in Danger, procured a Committee to be appointed for taking their Liberties into Consideration ; where a Protestation was made, to whom we know not, concerning their Privileges, which they pretended to be violated by our Letters and Messages, and thereupon in an unseasonable Hour, being six o' Clock at Night and a very thin House, scarcely coming to a third Part of the full Number, contrary to their own Custom in all Matters of Weight, they conclude and enter a Protestation for their Liberties, in such ambiguous and general Words, as might serve for future times to invade most of the Rights and Prerogatives annexed to our imperial Crown, as the very Marks and Characters of Monarchy and Sovereignty, whereof we found our Crown undoubtedly possessed; for founding the Claim of their Privileges upon the Words of our Writ for assembling a Parliament, the Contrivers of that Protestation, craftily mentioned some Words, *viz. super arduis Regni negotiis*, but of purpose left out *quibusdam*, which restrains that Generality to such particular

The Antiquity of National

particular Cafes as we are to confult with them upon; and the very uncontrouled Custom of all times doth manifetly prove that the King himfelf, or the Chancellor in his Name doth at the very Beginning of the Parliament declare unto them what things thofe *quibusdam* are, wherein he craveth their Advice and Affiftance, and Ufe is ever the beft Interpreter of Words in a Cafe of this Nature, upon which undutiful Proteftation, we were juftly occafioned to publifh our Pleafure for Diffolution of Parliament, as appears in our Proclamation in Page 483.

Lepton being ordered by the Houfe to attend the eighth of *February* and Mr. Secretary directed to defire the King from the Houfe, that *Lepton's* Patent be not executed during the Recess. The King referred *Lepton's* Cafe to the Privy-Council, as appears by the following Letter.

Jacobus Rex.

Right trusty and well-beloved Counsellor,
we greet you well, we have been informed by John *Lepton* that his Patent is not generally grievous to our People, but only is excepted againft by the Attornies of our Court at York, the Truth whereof we remit to the Trial of our Privy-Council, and if they find his Allegation to be true, we then fee no Cause why he fhould not enjoy the Benefit of our Grant, as he hath formerly done, wifhing
there

there may be some Course of Agreement between him and the others, which we leave to the Judgment of our Privy-Council; but if it be hurtful to the Commonwealth of our People, we will by no Means intercede for him, only let him be heard to say what he can for himself, and then we will aquiesce in our Council's Judgment. Given at our Court at Newmarket, the tenth Day of February 1621.

To our right trusty and well-beloved Counsellor, George Calvert Knight, one of our principal Secretaries.

Lepton's Patent was for the sole drawing Journal, of Bills and Declarations in the Courts of Justice in the City of York, for which he took exorbitant Fees. 289, 307.

Goldsmith's Patent was for making free such as had not fully served their Apprenticeships, for which he extorted large Fees.

Lepton and *Goldsmith* conspired with one *Howard* to prefer a Bill in the Star-Chamber against Sir *Edward Coke* Chairman of the Committee of Grievances.

That Members may not be discouraged in taking pains in the Business of the House, it was ordered that *Lepton* and *Goldsmith* be taken into Custody and their Papers seized.

The King sent a Message to the House Journal, to discharge *Goldsmith*, and not meddle any 463, 476, farther in that Business, wherein *Goldsmith* 477. is Plaintiff or Prosecutor against Sir *Edward Coke*,

The Antiquity of National

Coke, because that Business hath its Motion in another Court of Justice, and that it concerns his Majesty's Honour; but if *Goldsmith* hath by threatening or otherwise wronged any Member of the House, then the King leaveth him to the Censure of the House.

The House presented a Petition to his Majesty representing that he is misinformed of their Proceedings in the Matter concerning Sir *Edward Coke*, *Lepton* and others, and beseech his Majesty not to hearken to such Reports as may breed in him a Dislike of his House of Commons, who will ever continue in a dutiful Care to exercise their just Privileges and Liberties without any Prejudice to his Majesty in point of Honour or otherwise.

Journal,
487.

Mr. Secretary acquainted the House that it is the King's Pleasure that they proceed with *Lepton* as well as *Goldsmith* if he hath offended against the House.

Original
Penes, T.G.

In this Parliament Petitions being presented to his Majesty, That a Liberty of Trade in the Manufactures of the Kingdom might be given to the out Parts of the Kingdom. His Majesty's Answer was, that it was a Business of Consequence, and worthy the Consideration of Parliament, but it would hold the House very long, and therefore he would advise with his Council to give order in it. The King's Order to the Council was in Form following.

Jacobus

Jacobus Rex.

Trusty and right well-beloved Counsellors we greet you well, Amongst those Grievances that were presented unto us by the House of Commons at the end of the late Session of Parliament, there are these two, viz. one against the Officers of our Customs, as well within our Port of London as of our out Ports within this our Kingdom of England, for taking excessive and immoderate Fees of the Merchants and others to their great Discouragements in their Trade: The other is against the Farmers of our general Customs, for altering the Book of Rates in the Specie of Perpetuanoes and Serges. Touching the first we would have you with all convenient Expedition, to send for such Merchants and others, as have complained against our said Officers for their exorbitant Fees; from whom when you have heard the Particulars of their Complaints, you are then also to send for our said Officers of every Port whom it shall concern, and to will and require them to bring with them such Tables and Warrants as they have for the Receipt of their Fees; whereof when you have taken View, and heard all Parties, you are to certify us of your Opinions, what Fees are fit to be still continued, and what are fit to be disallowed; that thereupon, such farther Direction may be given by us for the Ease of our Subjects as shall be just and reasonable. And for the other Grievance,

The Antiquity of National

vance, we require you to inform your selves when this Alteration of the Book of Rates, for Perpetuanoes and Serges was made by the Farmers upon whose Warrant it was done, what Benefit hath accrued to the Farmers by the doing thereof; whether any thing hath been answered to us for the same, and lastly to consider of some equal and indifferent Rate to be laid betwixt us and the Merchants for the Subsidy of the same Stuffs. In all these Points you are to be satisfied by the western Merchants and the said Farmers, whom for that Purpose you are to call before you, and to certify us of your Proceedings herein; whereupon such Order shall be taken, as shall be agreeable to Justice. Given at our Castle of Windsor the sixth of July, 1621.

To our right trusty and right well-beloved Cousins and Counsellors, *Henry Vice-Count Mandevil*, President of our Council, *Oliver Vice-Count Grandison*, *Fulke Lord Brooke*, *Arthur Lord Chichester*, *Sir John Suckling* Knight Comptroller of our Household, and *Sir Julius Cæsar* Knight, Master of the Robes, or to any three or more of them.

In this Parliament of the eighteenth of King *James*, the Subsidy of the Clergy was confirmed.

And

And two entire Subsidies and one Fifteen ^{Journal,}
granted by the Temporality. _{34.}

By this Act every Man whether Spiritual or Temporal that is worth 3 *l.* in Land, Money or Goods (excepting Apparel) shall pay 2 *s.* 8 *d.* for Goods, and 4 *s.* for every Pound for Land, and all Aliens 5 *s.* 4 *d.* of the Pound for Goods, and 8 *s.* of the Pound for Land. He that was taxed for Lands was not taxed for Goods also.

This Parliament was dissolved before any other Bills had the Royal Assent, the Number and Titles of the Bills that passed the Commons hereafter follow.

A Bill concerning Apparel to prevent the Wast of Gold and Silver.

A Bill for Knights, Citizens and Burgeses in the County *Palatine* of *Durham*.

A Bill concerning Popish Recufants.

A Bill concerning the Princes Tenants.

Act concerning *Welch* Cloths.

Act concerning Distillers.

Act concerning Sea-coal.

Act concerning the Prerogative.

Act concerning the Princes Leafes.

Act to abolish Battle and Combat.

Act concerning Land gained from the Sea.

Act concerning Carmen and Wood-mongers.

Act concerning Liberty of Trade.

Act against Swearing had Royal Assent. 21 *Jac.* 20.

21 *Jac.* 20.

VOL. II.

Q

Act

The Antiquity of National

Act for Observation of the Sabbath.

Act concerning the Prerogative.

Act concerning Commons and Inter-Commoners.

Act concerning Commissioners of Sewers.

Act concerning Salt.

Act concerning Woollen Cloths.

Act to make Estates of Persons attainted liable to pay just Debts.

Act concerning Chandlers in *London*.

Act for uniting Churches in *Dover*.

Act concerning Dying.

Act concerning Glovers

21 *Jac.* 10. Act repealing the thirty fourth of *Henry VIII*, wherein the King had Power given him to make Laws and Ordinances for Government of *Wales*; this passed the Royal Assent, 21 *Jac.* Chap. 10.

21 *Jac.* 5. Act concerning Sheriffs Accounts, had Royal Assent, 21 *Jac.* 5.

21 *Jac.* 25. Act for Relief of the King's Patentees, had Royal Assent, 21 *Jac.* 25.

Act for Ease of the King's Tenants for Alienations.

21 *Jac.* 26. Act concerning the Princes Leases in the *Dutchy of Cornwall*.

Act concerning sufficient Jurors.

Act about Commonage in the Forest of *Waltham* in *Essex*.

Act abridging the Fees of Custom-House Officers.

- Act concerning Courts of Equity.
 Act for Limitation of Suits.
 Act concerning Actions against Justices of Peace, Constables, &c. 21 Jac. 12.
 Act concerning Monopolies and Dispensation of penal Laws, 21 Jac. 3.
 Act concerning Woollen Cloths.
 Act confirming the Foundation of the Charter-House.
 Act explaining an Act of the first of *Edward VI.* concerning Chanteries, &c.
 Act against Drunkenness, had Royal Assent, 21 Jac. 7.
 Act against vexatious Removals of Causes out of inferior Courts.
 Act concerning Prohibitions.
 Act concerning Justices of Peace, Constables, &c.
 Act concerning Decrees of the *Dutchy.*
 Act concerning forceable Entries, had Royal Assent, 21 Jac. 15.
 Act concerning Purveyance.
 Act against secret Inquisitions.
 Act for Confirmation of *Wadham College.*
 Act for better making of Serges: Journal,
 Act concerning fishing Voyages: 187.
 Act concerning Writs *ad quod Damnum.*
 Act for Abatement of Usury had Royal Assent, 21 Jac. 17.
 Act concerning Courts of Equity.

The Antiquity of National

Act concerning Processes in Courts of Equity.

Act concerning Tithes.

Act concerning King's Bench.

Act about Fees in Courts of Justice.

Act concerning Fees in Chancery.

Act concerning Cloth being generally worn.

Act prohibiting Transportation of Wool.

Fol. 452.

Act for avoiding insufficient Jurors.

Act concerning Benefices appropriated.

Jac. 23. Act for avoiding Delays in removing Suits into superior Courts, had Royal Assent.

Act concerning Corn, Retailers, Regraters and Forestallers.

Act against Importation of *Irish* Cattle.

Fol. 324.

Act concerning Purveyance.

Act for Restraint of the inordinate Use of Tobacco.

Act for Preservation of Hospitals.

Act for Preservation of the Fry of Fish.

Jac. 9. Act concerning Concealments.

Act concerning *Welch* Cloths had Royal Assent, *21 Jac.* 9.

Act concerning Sea Marks.

Act concerning Grants.

Act concerning catechising Children.

Act against Pluralities.

Act concerning Popish Recufants.

Act concerning Merchants.

Act

Act against shooting in Guns. This Bill was much opposed.

Act against scandalous Ministers.

Act concerning Impropriations.

Act concerning Trade.

Act for adding two Judges to the Lord Chancellor and Master of the Rolls,

Act against false Imprisonment.

Act concerning the Poor.

Act concerning Fines and Recoveries had 21 *Jan.* 16.
Royal Assent.

Act concerning Apprentices.

Act concerning Highways.

Act for Encouragement of the Fishery.

Act for Relief of the Poor within three Miles of *London*.

Act for free Trade into *France*.

Act for good Usage of Wool and Yarn.

Act to make River *Ouze* navigable from *Humber* to *York*.

Act against transporting Iron Ordnance or Bullet.

Act for explaining Laws against Popish Recufants.

Act concerning Intrusion, where Limita- 21 *Jan.* 16.
tion upon the King is twenty Years.

Act concerning Days in Chancery.

Act against Women that come not to Church, 12 *d.* per *Sunday*.

Act concerning Petty-larceny.

Act against burning of Heath, continuing 7 *Jan.*

Q3

Act

The Antiquity of National

Act concerning *Colchester Haven*.

Act concerning Customers, Controulers, Searchers, &c.

Act to transport Woollen Cloth.

Act concerning Brewers and Malsters, re-
viving 39 *Eliz.*

Act for increase of Navigation and pre-
venting Exportation of Coin.

Act against excessive Fees of Registers,
Lawyers, Clerks in Court, &c.

Act concerning Pewterers of *London*.

Act against receiving Pensions or Gifts
from foreign Princes secretly.

Act against new erecting Inns, without
Licence from Assizes or Sessions. Keeping
an Inn is by Common Law a Trade, and
so confirmed in this Act.

Act concerning Prohibitions.

Act against Importation of Corn.

Act concerning Courts of Justice.

Act for free buying and selling Wools
within the Kingdom.

Act concerning the *Dutchy of Lancaster*.

Act for abbreviating *Michaelmas Term*.

Act explanatory of 13 *Eliz.* concerning
Delapidations.

21 *Jac.* 19. Act for further Description of Bankrupts
had Royal Assent, 21 *Jac.* 19.

21 *Jac.* 13. Act concerning Geofails had Royal As-
sent, 21 *Jac.* 13.

Act for free Fishing on the Coasts of
America.

Act

Act for Exchange of Lands between the Prince and Sir *Lewis Watson*.

Act concerning Fees in Ecclesiastical Courts.

Act concerning Transportation of Butter ^{21 Jac. 22.} had Royal Assent, 21 Jac. 22.

Act against Bribery and Corruption, prohibiting giving any thing for a Place of Judicature.

Act for continuing Acts, and repealing about seventy five.

Act concerning Ostlers and Inholders ^{21 Jac. 21.} had Royal Assent, 21 Jac. 21.

Act against wrongful Imprisonment.

Act concerning Tith of Fish and Fishing.

Act concerning Writs of *Superfedeas* and *Certiorari*.

Act concerning Elections of Knights, Citizens and Burgesses.

Act against Beggars.

Act against Vagabonds and idle Rogues.

Act to enable Ministers to take Leases for Benefit of their Wives and Children.

Act concerning drying and packing of Fish.

Act concerning Administrations.

Act for repairing *Dunwich* Haven.

Act concerning Navigation of the River ^{21 Jac. 32.} *Thames* had Royal Assent,

These preceding Bills passed the House of Commons, besides a great many private Bills, which upon the Dissolution all dropt

but the Bills for Subsidies. Above 130 Publick Bills that were passed in the House of Commons, and some of them passed by the Lords, were all lost for want of the Royal Assent. From the End of the Session of Parliament of the seventh of King *James*, not one publick Act, for the Benefit of the Nation, had the Royal Assent, till the Session of Parliament begun at *Westminster* the nineteenth Day of *February* in the twenty first of King *James*, in which Parliament thirty five publick Acts had the Royal Assent; twenty of them being the same that dropt at the Dissolution on the sixth of *January* 1621, particularly that against Monopolies and Dispensations with penal Laws, which in the Parliament of the eighteenth and nineteenth of King *James* occasioned such long Debates, so many Petitions, Remonstrances, Protestations and Royal Letters and Messages.

21 Jac. I.
cap. 3.

21 Jac. I.
cap. 34.

In this Parliament of the twenty first of King *James*, there were granted to his Majesty three intire Subsidies, and three Fifteenths and Tenths, whereof 18000 Pounds were to be employed, and were appropriated towards the Repair of decayed Cities and Towns, and the Residue was to be expended in the War then expected to be soon enter'd into: And for the better Management of those Moneys, and that they might be certainly employed to the
Uses

Uses intended by the Parliament; eight Citizens of *London* were by the House of Commons named to be Treasurers, and ten other selected Persons to be of his Majesty's Council for the War: All which Treasurers should make Oath, that none of those Monies should issue out of their Hands without Warrant from the said Council of War; and that they should make no Warrants for the Payment of any of those Monies, but only for the End above-mentioned: And further should all be accountable for their Doings and Proceedings in that Behalf to the Commons in Parliament, when they or any of them should be thereunto required.

The four Subsidies of the Spirituality, and the afore said Act of Subsidies of the Temporality were granted upon a Prospect of a War with *Spain*, upon King *James's* breaking of the two Treaties with the Catholick King, *viz.* that of the Match of the Prince of *Wales* with the *Infanta* of *Spain*, and the other for the Restitution of the Palatinate. As pleasing as the Breach of these two Treaties were to the Parliament, yet it may be concluded from the manner of their Grant, that the Fears and Jealousies of the eighteenth and nineteenth of the Reign, that took up so much of the Time of that Parliament, were only laid asleep for a time, and not wholly extinguished.

The

The Antiquity of National

The King at his first coming from *Scotland* to the rich and great Monarchy of *England*, flushed with the Grandeur of the *English* Court, heighten'd by his Courtiers Flatteries into an Opinion of his own Wisdom and boundless Power, he in his Speeches to his Parliaments, and Proclamations to the Nation, assumed and made use of such high Monarchical Stile, the divine Right of Princes, and Subjects absolute Obedience, as to give his Parliament and People Apprehensions and Fears, that instead of the ancient Constitution of *England*, a Monarchy limited by original Contract, between the ancient Princes and their People, established, and known by Custom and Usage, he aimed at a more despotick Government than his Predecessors, which they were not willing to submit to; from these Fears, these Jealousies, his whole Reign proved one continued Strife and Debate between the King and his Parliaments of the just Limits between Prerogative and Privilege.

The *English* recognized King *James* as their rightful and lawful King by Right of Succession, without making any Terms with him, which his *Scotish* Subjects did not neglect to improve to their own Advantage, whose growing Greatness and Favour at the *English* Court, together with the Power of the prime Minister, produced
the

the Distinction of Court and Country Party, which latter Party was discriminated by the Title of the Faction.

There may be a Faction against Liberty, in a Monarchy limited by Law, as well as a Faction against Prerogative. The Ministers of State that conspire against the legal Rights and Liberties of the Subject, advise and assist the Prince to supersede Laws, and make his Will his Law, are justly entitled to that odious Name of Faction: And, pretended Patriots, who conspire to distress the King and his Ministers, whilst they administer Justice according to law, are the Faction against Prerogative, and ought to be punished according to Law.

Those Ministers that advised King *James* to disown any Inherent Right the People had to their Privileges, and that they were only the Grace and Favour of him and his Predecessors, were very far from doing the King service, for it made the People more jealous of their Liberties; for in the last-mentioned Act of Subsidies, the Parliament would not trust the Money granted to the Direction of the King and the Officers of his Treasury and Exchequer; but put the Money under the direction of Guardians of their own appointing, thereby transmitting to Posterity a Precedent to the Diminution of the Honour of the Crown.

Fears

The Antiquity of National, &c.

Fears and Jealousies seemed to fall into a little sort of a Slumber, in the two last Years of his Reign, after the Treaty of the *Spanish Match* was broke off, but awoke again in a Fright and Rage in his Son and Successor's time, when the Grievances, Fears and Jealousies that began with the Parliament of the *Thirtieth of January MDCXX*, were more and more aggravated till Monarchy, Church and State, with all private Right and Property had that necking Stroke in the cursed detestable Murder of the most religious, virtuous Prince, King *Charles I*, of sacred Memory, on the *Thirtieth of January MDCXLVIII*, a Day *nigro carbone notanda*, when that most wicked Paricide, left an indelible Shame upon all that had any share, or bore any part in that dark Scene of Iniquity, over which I draw a veil, and conclude my History of Parliaments.



THE

THE
HISTORY
OF
COURT BARON
AND
COURT LEET:

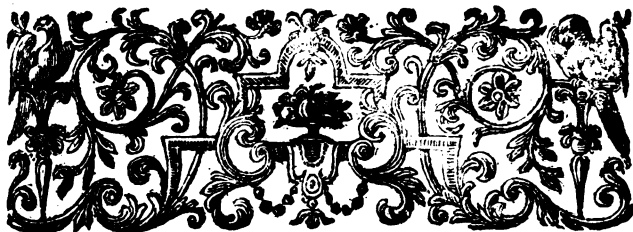
A Chronological HISTORY of
them from the earliest Times, drawn
down to the present.

Together with

The Rights of Lords of Manors in Com-
mon Pastures, and the Growth of the
Privileges the Tenants now enjoy there.

L O N D O N:

Printed in the Year MDCCXXXI.



P R E F A C E.

IN *this Essay upon the Antiquity of Court Leet and Court Baron, my chief Design is to trace them up to their Original: Court Leet and Court Baron was originally but one and the same Jurisdiction, and was the most ancient of all Courts, which being separate and independent Jurisdiction, was at first subject to no superior Jurisdiction; the Decisions were under the Limitation of no national Law; so many Courts as there were, so many different Manners of Proceedings; the Judges there being accountable to no superior Court.*

As the Nations grew up into Monarchies, national Laws sprung up, and the various Laws of those little Courts made subject to Courts appointed by national Authority, to correct the uncertain Determinations of those independent Jurisdictions; Courts were appointed to which Appeals might be made, from those Courts of original and ordinary Jurisdiction, that sprung up without any Delegation or Commission, as did Court Baron;
the

P R E F A C E.

the Lord of the small District as chief thereof, both Land and Men were his, and he disposed Land as he pleased; and after he had made any Grants of the Lands of his District, and any Dispute or Controversy amongst the Grantees arose, he from whence the Claim sprung was the sole Judge and Determiner of the Rights that were derived from him.

The whole Right and Power of Land was at first in the chief of the District, and he determined all Claims of right of his Vassals, the whole Land being originally his own, he being absolute Lord thereof and also of the Men in his Dominion.

I shall show by what Steps and Degrees the Chiefs of Districts granted Part of their Lands to their Friends and Followers, to some freely, and to others with Reservation of Rents and Services.

I shall show upon what Reason the Chiefs allowed their free Tenants a Share with them in the Administration and Government of their Districts.

I shall also show when and for what Reason the Saxon Kings took from the Chiefs of Districts part of their original and ordinary Jurisdiction; and how and in what Manner and for what Reasons the Saxon Kings re-granted to some great Men, the ancient Jurisdiction taken from them, which Re-grant was termed the Jurisdiction assigned.

P R E F A C E.

I shan't presume to enter into the present Authority and Jurisdiction of Court Baron, farther than to connect the Ancient to the Modern; Antiquity abstracted from the Modern being dry and inspid, neither entertaining nor instructive, till by chronical Gradations the Antique is drawn down to the present time.

All are inquisitive into the Original of their Rights and Privileges, to be satisfied they are not of modern Grace, but rather choose to find an inherent and immemorial Right in them. Even Emperors and Kings that enjoy the full Swing of Power and Dominion, rest not satisfied with the full Enjoyment and Exercise thereof, without deriving of it from their Progenitors Time beyond Memory.

Nations and People are ambitious of deriving themselves from renowned Progenitors, and have taken Names expressive of their Descents.

The Gallo-Græci from their being descended by Inter-marriages from the Gauls and Asiatick Greeks.

The Celtiberi of Spain from the Celtæ and Iberi, from whom they were jointly descended, Gallia from the Gauls, and France from the Francks.

If the Genealogy of the Kings of Britain from Brutus to Henry VIII was well connected, in all the intermediate Space, then Nennius, Nechamius, Asserius, and Jeoffry

P R E F A C E.

of Monmouth, might fairly make our Country take its Name from Brutus; but it falls out unluckily for those Genealogists, that the great Cæsar, when he peep'd into Britain, says the Nation was not under one Monarch but several Princes, who met in a national Council and chose Cassavallane to be Captain General to command them and all their Men against Cæsar.

Jeoffrys's seventy British Monarchs before Cæsar's Invasion, don't quadrate at all with the Commentaries, wherein Cæsar says he could learn little from the British People of their Genealogies or Descents.

Besides, Gildas who writ de excidio Britanniaë, about the middle of the sixth Century, says what he collected was from foreign Authors, he being able to find no Monuments of Antiquity in Britain.

Jeoffry is also very unlucky in the Name he has coined for the Metropolis of Britain, which he calls Troja Nova, as the Name given to it by his Trojan Conqueror, which being Latin Terminations carry with it a positive Indication of Forgery, for Latin was not a Language even in Italy, at the time he ascribes to Brutus his landing in Britain.

To return to the Antiquity of the English Laws, in the Account whereof I have more sure and certain Guides: The Sages of our Law have sapped the Foundation of it, have traced up the modern Laws to their Original, thereby

P R E F A C E.

thereby finding out the Reason of every particular Law, in what Manner it had its Beginning, and how the first Fœtus grew up to perfect Stature; from the Fountain Head they judge of the Nature and Qualities of the Rivulets descending from it, the English Law did not spring up like a Mushroom, the Foundation indeed was narrow, but the Out-works are large, the Additions and Polishings are great, beautiful and good, and become the Admiration and Envy of foreign Nations.

Our Statute Laws upon a cursory View seem to be original Laws, made by the Wisdom of the Nation, for the better governing and directing the Measures of Peace and Property; but even that sacred Statute Law called Magna Charta, and the other old Statutes of Henry III, and Edward I, are chiefly declaratory and in Affirmance of the good old English Laws, made by the Parliaments of the old Form, which not being upon Record are but a Part of the common Law.

A Gentleman of such Fortunes as not to want the profitable Part, the Practice of the Law, may find in the History of the Law an Enlargement of his Knowledge, and one agreeable Part of that general Speculation, which a Gentleman of Genius entertains himself with; and thereby advances his Understanding above the Common Rank, as much as his Birth and Fortunes do his Station in the World.

P R E F A C E.

And as to a Student of the Law that bath Practice in his View, nothing can more facilitate and perfect him in his Study than searching into the History and Antiquity of it, whereby he may acquaint himself with the first Reasons and Causes, from whence each Article of the Law sprung.

By tracing up penal Laws to the first Spring of them, we may find that Crimes were at first chiefly punished by pecuniary Mulcts and Penalties, and that afterwards, when Vices grew more general, sanguinary Laws were made, that by a greater Severity growing Evils might be curbed in the Bud.

During the Simplicity and Honesty of our Ancestors the English Saxons penal Laws were very moderate; they at first lived amongst themselves, neither visiting nor being visited by more luxuriant Nations; but as Traffick increased, they carried abroad the Product of the Country, and came freighted Home with Supports to Luxury, which would not have been vendable Commodities here, if they had not brought Home foreign Vices to help off with the Goods they imported.

The Danes that invaded the Saxons brought over Drunkenness and Murder, which were not national Crimes before in England as may be gathered from the Saxon Laws, there being in them no Punishment for Drunkenness but two, one decreed in the Parliament

P R E F A C E.

at Berghamsted under Wightred in the Year 694, and that was particularly for the Priests to be suspended if they were guilty of Drunkenness.

And one other in Ina's Laws, that if any Person was guilty of quarrelling or fighting at Ales or Feasts, he should forfeit thirty Shillings.

But by Edgar's time the Danes Drunkenness had infected the Saxons, so that he promulged a Law, that drinking Cups should have Pins put into the Sides to be Gages to the Peoples drinking; but the Clergy were to be at a less Gage than the Laity.

Then as to wilful Manslaughter afterwards termed Murder, the Punishments, that at first were only pecuniary, were made sanguinary from the frequent Murders that happened from the inveterate Hatred that arose between the English and Danes, which rose to such a Height that at Feasts and Ales they were in Danger of having their Throats cut whilst the Cup was at their Mouths, whence it became a Custom for the Person that was going to drink to call to his next Friend to be his Surety or Pledge for his Safety whilst he was drinking.

Whether the general Massacre of the Danes the Day after their Feast of St. Brice, before they had recovered of their Debauch, will bear the Test or no, I shall not enquire.

P R E F A C E.

But certain it is that Canute King of Danemarke invaded England, either on Pretence of revenging upon the English the ill Usage his Countrymen the Danes met with here, or out of Ambition to make himself King here; be that as it will, Canute had such Success in his Invasion, as to drive away the English King Ethelred and to obtain the Crown.

And Canute's mercenary Army of Danes and Swedes were so burdensome to the English, that the Nobles swore Allegiance and Obedience to Canute, and for a farther Security to the Danes that were settled here, the English Nobles to induce Canute to send his Army of Mercenaries home to Danemarke, consented to an extraordinary Law, called Englishire, from the Nature of it.

Mirror,
228.

By the Law of Englishire if a Dane or Foreigner was slain, the Manslayer was to suffer the Pains and Penalties inflicted by the Laws of England upon malicious and wilful Manslaughter; if the Criminal was known and fled for the same and was not taken, the Friburgh to which he belonged was to pay the Value of the Man slain according to the Law of Were and Wite; and if the Manslayer was neither taken nor known, the Friburgh in which the slain Person was found, should pay into the King's Treasury forty six Marks, and if the Friburgh was not able to pay that Sum, it was to be levied upon the Decenna or Hundred, unless upon Quest, Englishire.

P R E F A C E.

Englishire was found, that is unless the slain was upon the Enquiry, found to be English, and then this Law was out of the Question, and the Criminal left to the general Law of the Land.

Then as to Descents and Inheritances, the Knowledge thereof in the several Ages is both entertaining and useful. Cæsar and Tacitus, speaking of the Britons, say every ones Children were their Heirs; — *Sucessores sui cuique liberi & nullum testamentum, &c.* the Estate of the Father most anciently was divided amongst all the Children, Sons and Daughters, and afterwards amongst the Sons only.

Some sort of Lands descended to the eldest Son only, for the Support of noble Families: Some went to the youngest Son, and if the deceased Person left no Sons then to his youngest Brother.

Some Lands were at the absolute Will of the Lord at first, and those very Lands in time became customary Holdings in those that were originally no more than Tenants at Will of the Lord.

In the History of Feuds and Tenures, there is a surprising Variety, differing Customs in almost every Lordship.

Every Lordship having a Power to make By-Laws, the various Laws and Customs of Manors were innumerable, till the Saxon Statutes reduced the Laws and Proceedings of these independent Jurisdictions to some Degree of Uniformity.

P R E F A C E.

The Town Court or District Court, now Court Baron, was not erected by Commission, but as said before, was an ordinary and original Jurisdiction, which was at first solely in the Lord, afterward in the Lord and Suitors.

The Proceedings in Court Baron were so irregular and partial in some Manors, that the Wisdom of the Nation found it necessary to provide Remedy: Appeals were directed to be made from Court Baron by several Gradations up to the Court de more, where the King sat in Person with his Nobles and great Counsellors, which was the dernier Resort, as is now the House of Lords.

Some of the Saxon Kings made Iters thro' the Nation to enquire of false Judgments in the inferior Courts, and when any Errors were found in the Judges they were punished; in Aid of these Royal Eyres, went with the King his Referendarius Aldermannus Angliæ, and other Counsellors learned in the Laws of the Land.

It is entertaining and useful to see how the modern Courts took the Outlines of their Proceedings from the ancient Practice of the Saxon Courts, which for many Centuries have been touching up by the great Masters of every Age, till they came to be finished Pieces admired by all Persons of Skill. To see how the English-Saxon Government was founded in Property, how after the Conquest of the Britons

P R E F A C E,

Britons, the Conquerors divided the Lands according to Agreement, all having a share but the Servants and poor Britons, who remaining amongst their conquering Masters, became their absolute Slaves.

The military Saxons had all more or less Property in Land and Power, being all in some degree or other Sharers in the Conquest and Members of the Commonwealth; The Saxon Kings at their Coronations swore to maintain their People in their Rights and Properties, and in return the People did homage and fealty, and this was the Saxon original Contract between the King and those that had a Dividend of the conquer'd Lands.

The Saxon Kings were so just and good as to observe and keep their Oaths and Contracts made between them and those that had a Share with them in the Land taken from the Britons.

The Norman Invasion affords another Scene of curious Speculation. Duke William laid claim to England from Affinity, Donation of King Edward and some other specious Pretences; he that as it will, he advised with his Norman Nobility and Men of Wealth there, about the Feasableness of gaining the Crown of England, the great Men of Normandy were as forward in the Undertaking as William could expect, having a good View of Gain, offer'd him their Assistance, but wisely contracted with him to be Sharers with him
in

P R E F A C E.

in the English Lands, if Success attended their Undertaking; they were Adventurers upon the Terms of no Purchase no Pay; the Undertaking succeeded, Harold was beaten and the English submitted to Duke William and he owned King of England and crowned; and at his Coronation took the Oath in the same Form the Saxon Kings did before him.

The Norman King claim'd and had all the Lands of the Crown; his Nobility had their Shares in proportion to the Expence and Hazard they were at, out of the Lands of Harold's Adherents.

The Norman Nobility that had Honours and Manors out of the forfeited Estates, claim'd them as of right, not as of Favour from the King, and made the best of them, not following the Moderation of the Saxon Thanes; and after they had raised their Power in their Lordships to the highest Extent, they cast about them how to maintain and preserve their Acquisitions, to them and their Heirs: They soon learning that the old Laws of England allowed of no arbitrary Resumptions, demanded of the King to confirm the old Saxon Laws, they claiming the same Right to their Possessions, as the King had to the Crown and his Demeans, he gaining the one and the other by their Assistance.

The King comply'd with the Demand of his Nobility, and a second time took his Oath to protect and maintain the holy Church and all the

the

P R E F A C E.

the People in their Rights and Liberties, and this Oath and that before taken at the Coronation, with the Confirmation of King Edward's Laws, was the Norman Original Contract, stipulated in general, between him and his Norman Barons, before they yielded their Assistance to him in the Invasion of England; and the Norman Barons that had got great Possessions strenuously defended them against the Invasions Rufus and his Successors attempted upon theirs, and the Rights of those few English that stood neuter between King William and Harold, and those English that joined with King William.

Many Struggles there were between the Norman Kings and Barons, the first aiming at absolute Power, and the latter contending for Rights and Liberties: They sharing English Honours, Manors and Lands with King William, upon conditional Tenures, to stand by and assist him in the Maintenance of the Crown he gain'd, in Consideration of his maintaining them in the Possessions they had got, to which they claim'd a right equal to what the King had to his Crown and Demeans.

That the Norman Government here was founded in Property, upon Contract conditional, Tenures conditional, Homage and Fealty conditional, is fully implied in the Coronation Oath.

But the Conditions implied in the Coronation Oath, being not duly observed by William Rufus and Henry I. The Prelates and Nobles

P R E F A C E.

bles in the Parliament of Oxford 1136, required of King Stephen an Explanation of their Homage and Fealty, viz. that they were bound by their Oath to him, no longer then he should support and maintain their Rights and Privileges.

The Barons by Force defended their Rights and Privileges against such Kings as attempted to invade them, and never rested till they obtained the lasting Confirmation of Magna Charta in Edward I's Reign.

The Rights the Barons had in the Courts of their Manors, was no small Part of the Rights they contended for; and the Lords Tenants were as tenacious of their Rights; and what Rights the Lords and Tenants anciently had and now enjoy, together with the various Changes on one side and the other, to the present Certainty of Rights, is the Subject of my Essay.

We may now with Pleasure read the History of Feuds and Tenures, and rejoice in the Happiness we enjoy, by being delivered by the self-denying Goodness of King Charles II, from those hard Services our Ancestors labour'd under, when no Parent could appoint a Guardian to the Minors he left; for to the King or other chief Lords belonged Ward, Marriage and Relief, and many a good Gentleman's Family thereby ruined. By knowing the Hardships our Ancestors suffered, we may bless our selves that we have obtained the Freedom from slavish Tenures that we now enjoy.

T H E



T H E
H I S T O R Y
O F

Court Baron and Court Leet.



IN this History of *Court Baron* and *Court Leet* I intend to show its Antiquity, how at first the Lords ordinary Jurisdiction arose without Commission or Deputation, in what Manner the Power was solely and absolutely in the Lord in the small District; as in the great it was in the Patriarch or Monarch, without any authoritative Associates, the Lords at first having no Sharers with them in Government, no Assessors or Suitors: I shall show how the Governors of great and small Districts kept pace with one another in their Manner of Administration; how the Monarchs by Steps and Degrees limited their, at first, absolute Authority, by taking to their Assistance

Assistance Associates, Advisers and Counsellors, and how the Lords of small Districts governed at first absolutely, and afterwards by and with the Assistance, Advice and Consent of certain Members of their Territories.

To begin with the most early Account of Government, when the People went from *Babel* in Tribes, of one and the same Language, to find Conveniences of Life; the Patriarch or Leader of each Tribe was absolute Governor and Director of the whole in their Peregrination; then was no proper Land, no fixed Houses or Dwellings, no Tillage, the People living upon the natural Produce of the Earth, Herbage, Fruits and Roots, which with Honey and the Milk of their Flocks and Herds, made up their Maintenance.

When a Tribe had well foraged their first Plantation, they with their Herds and Flocks moved forward into the next unplanted Country, which being Common, the first Possessor made it proper, and his uncontroverted Right, as long as he kept Possession.

In Process of time, Increase of People and of Herds and Flocks, caused such an Extention of the Tribes as to become contiguous, and limit them to no farther Extention, and then that they might not want Sustenance for their People, Necessity the Mother of Improvements dictated to them
the

the Necessity of cultivating their Plantations; then they sat down to make themselves abiding Places and settled Dwellings, and that which at first was common and free to all, became proper to the Possessors, who by Force maintained their Possessions against all Invaders.

Then began Contests to arise between one Tribe and another about Meets and Bounds; Cattle seized for Trespass and reclaimed by Force, and Punishments inflicted by the Stronger at his Will, the World being then under the Law of Nature.

Force being the only Law, Contests between Tribes on the Confines grew very bloody, multitude of Lives lost, the Stronger over-running the Country of the Weaker, killing and carrying away both Men and Cattle.

The Patriarchs finding it necessary for the Preservation of their People to contrive some general Rules and Measures of Peace to be observed on the Borders, by their absolute Authority over their People, agreed upon certain Rules to be observed by the People of one Tribe and the other, and this was the first Dawn of the Law of Nations.

The Patriarchs as Royal Pastors apportioned the Lands of their Provinces amongst ^{Magick,} the several Heads of Families, and prescribed to them Laws for the Preservation ^{19.} of

of the Lives and Properties of the People of their Tribes, retaining to themselves the Prerogative of being supreme Judges and Interpreters of the Laws they had given, and so began provincial Laws, being at first the absolute Will and Command of the Prince.

The Increase of People and of Plaints and Trespasses making too much Business for the Patriarch to attend to and dispatch, he chose to himself a Council of Assistants which were the Heads of Families, to whom he had before assigned Lands.

To these Heads of Houses, belonged the same Jurisdiction within their Districts, as did to the Patriarch in the Province, in the Administration whereof they were his Council of Advisers, and so grew up limited Government from the necessary Convenience thereof.

As the Patriarch, when he first allotted Portions of Land to Fathers of Families, was then absolute, so was the Head of the Clan, to whom the Portion was allotted, absolute Lord and Commander of the Lands within his Allotment and of the People therein.

Rel. Spel. 2. From the first Settlement of Tribes, Hords and Clans, there was Master and Servant; the Patriarch as Head of a Tribe prescribed Laws to his whole People, he was Law to them, his Orders and Directions

rections were the Measures of Peace and Property, there being no other Law but that of his Will; but when the Patriarch began to find it convenient to admit the Heads of Families into a Share of the Administration of the great Province, then did the Heads of Families admit their Sons, Grandsons and Collaterals, into a Part and Share of Land and Authority, tho' they were at first little Patriarchs, within their Districts having Power of Life and Death in their Hands; there being no Common Magistrate, they had ordinary Jurisdiction, as a Concomitant to the Possession of Land.

Now I proceed to the immediate Government of the Family or Clan, the Head whereof out of his Portion granted Lands to his Men, to some freely without any Condition, to some others under Obligations of Services; this Head of a Clan or Family is the Predecessor of the Governor of the Street, which is the Name given to the small Colony or Clan by the *Germans* and *Gauls* from their building their Houses by the sides of Rivers or Highways near to one another, to be ready to assist one another against Robbers or any other Invaders of their Property. *Tacitus.*

It appears the People had a Property in their Lands, in the time of the latter Patriarchs, tho' no farther Particulars appear, than the People having a Right there-

to by some provincial Laws of which we know little more than Sacred Writ helps us to.

Quarrels between Tribe and Tribe for Extention of Bounds devoured the weaker Tribes, the Stronger annexing them to their own, thereby raising great Monarchies; which being founded in Conquest were absolute and despotick, the Prince's Will being the Law.

These great Monarchs granted Lands to their Friends and Followers without any Reserve, whereby the Landlords were as despotick in their Demeans as the Monarch in his. *Hoc ipsum Lex fit, quod principem placet legis habet vigorem.*

Rel. Spel. 3. Tacitus in his Account of Landlords, saith *Agricolis suis jus dicit*, the *Agricolis* in this Place of Tacitus must not be limited to Husbandmen only, but taken at large to extend to all his Men, all the Inhabitants of his Street, the Lord having absolute Authority over all his Lands and Men, those that had Lands assigned to them by the Lord, held them no longer than during the Will and Pleasure of the Lord, as appears from *Cæsar's* Words, *viz. neque quisquis agri modum certum aut fines proprios habet*, the Tenants to the Landlords had no Estate in their Lands, they being removable at Pleasure, by the Feudists called *beneficia*.

Cæsar
lib. 6.
pag. 116.

Rel. Spel. 6.

The

Court Baron and Court Leet.

531

The German Lords had their *umbacti*, Cæsar Eng. comites & clientes, who were their followers in War and Companions in Peace, and had their Subsistence out of their Lords Lands, according to the Will and Pleasure of the Lord, to which Purpose *Gerardus Niger* Consul of Milan, in his Treatise of ancient Feuds and Tenures has these Words, *antiquissimo tempore, sic erat in Dominorum potestate connexum, ut, quando vellent, possent auferre rem, in feudum à se datum*; every Lord has ordinary Jurisdiction in his Territories.

Thus stood the absolute Power of Prince and Lord in the time of *Cæsar* and *Tacitus*, my next Step is to show by what Means and in what Manner the People came to have a Share with Prince and Lord in Lands and Administration in the great and little Seignory.

In the declining State of the *Romans*, the *Huns*, *Goths* and *Vandals*, with their Northern Hive, swarmed in upon the Empire. The Princes and People were under the Necessity of no Purchase no Pay; the Leaders enter'd into a Confederacy and Compact with their Followers, that the Lands conquered from the *Romans*, should be divided amongst them in such Proportion as should be agreed on in the Council of Undertakers, *i. e.* Commanders. According as Success favoured these joint Undertakers, their Al-

lotments were greater or smaller, the General had his Part, and the inferior Commanders theirs; the General out of his Share maintained himself and his Attendants, the Captain kept sufficient Share to support himself and Family in plenty, and divided the rest amongst his Friends and Followers freely without any Load or Burden, farther than the federal Union tied the whole landed Interest to one another, in common Defence against all Invaders of the united Property.

When these confederated Undertakers found themselves in danger of Invasion, the Prince called together his Captains, to advise and consult about the common Safety, if in the Consult it was agreed to be convenient to call to Arms, the Captains attended the Prince with all the *Posse* of landed Men, who were all ready upon Summons to defend the Lands they had obtained, every Land Owner having a Property therein; so were the *Gotbick* Governments founded in Property.

In civil Cases the Prince had his Council of principal Landlords, with whose Advice and Consent all Matters of Government were administered in the great Seignory.

The Lord governed his little Seignory by and with the Advice of his landed Men, who were his Companions in Council and
in

in War, so all that had any Property in Land had some Share in the Administration.

The preceding short Account of the Governments on the Continent is a sufficient Introduction to my Design, which is to shew the original Rise and Growth of the little Seignories in *Britain*.

The *Britons* being conquered by the *Romans* received Laws from their conquering Masters, who suppressed the Government of the *British* Princes, and divided the Nation into four great Provinces under the Direction of four *Roman* Lieutenants, who were military Governors throughout *Britain*; they erected Forts and Camps and raised Taxes and Tribute upon the *Britons* towards the erecting and maintaining them and supporting the Legions.

Tho' the Government of the *British* Princes was suppressed, the Chief of the Village was allowed to be Governor and Director of his own People in all Matters relating to themselves, but if any of them transgressed the *Roman* Laws or Orders, they were judged by *Roman* Officers according to the *Roman* Law.

As all the World was taxed by the *Romans*, *Britain* was to pay dear, for all the Corn and Cattle of the Nation were the *Romans*, they being Masters of the whole Produce of the Nation, and the *British* Chief

of the Street was to carry it to such Magazine as the immediate *Roman* Officer appointed; this same Headborough was to answer for all the Husbandmen of his Village, and allowed to judge his own People for Crimes and Offences; as to Property they seem to have none at all, and therefore no Occasion for any Judge to determine private Rights between one and another Husbandman.

The *Romans* allowed the *Britons* the free use of their religious Rights and Customs, and their Priests the *Druides* were allowed to direct the *Britons* in religious Ceremonies, but whatever Favours were granted them by *Claudius* and his Lieutenants, they lost them all to be sure after *Agricola* Lieutenant in *Britain* under *Vespasian*, *Titus* and *Domitian* had made a complete Conquest of the *Britons*. The *Roman* Laws spread more in *Britain* by the artful Management of that great Politician who by Degrees introduced *Roman* Laws and Customs, but still left the Chief of the Village to be civil Governor over his People.

That little Share of Government that the Chiefs of Villages (not possessed by *Romans*) were allowed to have, preserved in Memory the old *British* Laws, during the Continuance of the *Roman* Government.

After the *Romans* deserted the Island the *Britons* re-assumed their ancient Government

ment of Princes in Provinces and of Lords of Villages; the Princes in publick Affairs of extraordinary Moment assembled the Lords of Villages in their several Principalities, and the Lords of Villages consulted their Husbandmen in Matters appertaining to the particular Government of those little Districts.

Neither Princes in their Provinces, nor Lords in their Villages exercised despotick Rule, but with the Advice and Consent of the People, administred Justice in the one and the other.

Some faint Shadows of the Laws and Customs of the *British* Court of the Street or Village appear in *Howel Dha's* Collection of the old *British* Laws, as appears from the Fragments of *British* Laws mentioned by *Gildas*, *Nennius* and *Bede*; but that little of *British* Laws and Customs to be gather'd from thence or from the *Roman* Authors is so short and uncertain as to serve only for a Preface to the Laws and Customs of the *English Saxons*, therefore I proceed to an Account of the *Saxon* Government in *England*, of which a more certain Account may be given both from History and Acts of Legislature.

The *Saxon* Invaders and at length Conquerors of *Britain*, conquered by Detachments: *Hengist* and his Companions treacherously supplanted *Vortiger*, who invited them

The HISTORY of

them over to assist him and the People of *South-Britain* to repel the *Northern Rovers*; the *Saxons* gave effectual Assistance and drove back the *Picts* and *Scots* into their own *Northern Country*, and then the *Saxons* from Auxiliaries, set up for Masters, and *Hengist* their Leader erected the Kingdom of *Kent*; and in time seven *Saxon Kingdoms* were built upon the Ruins of the *Britons*.

After many Battles and much Bloodshed, the noble *Britons* that escaped out of lost Battles, retired into the mountainous Parts of *Wales* and *Cornwal*, leaving the fruitful Part of the Land to the conquering *Saxons*, who made the inferior *Britons*, that lived by their Labour, to till the Land and tend the Herds and Flocks as they had been before used to do for their *British* Masters.

When the *Saxons* found themselves Masters of *British* Lands and *British* People, they sheathed their Swords, and turned their Thoughts to the establishing a civil Government, to enjoy the Fruits of their Labour in Peace and Plenty.

Then they began to consider of Methods of preserving in Peace the Property they had gained by War, and followed the Method of their Ancestors the *Goths* on the Continent that broke in upon the *Roman Empire*.

The chief Leaders to unite their Companions to them in Interest, in common Council

Council agreed to divide the Lands they had taken Possession of; the Captain Conductor had an agreed Proportion, and all the under Captains a certain Share.

The chief Conductor of each Tribe of *Saxons* that came over, had a great Share of the *Britons* Lands to support his Dignity as Chief, who in time assumed the Title of King. The Captains under him had a Share sufficient to maintain and support those that were his immediate Followers, and fought under his Banners. These Under-Captains were afterwards called *Thanes*.

The *Saxon* Word *Thane* or *Tbegne* implies Minister or Servant, who was an honorary Servant to the King in the Field and in Council, not a Servant under absolute Command, but obliged by federal Union to serve the King in War and in Council, for Preservation of one and the others Property.

This Under-Captain or *Thane's* Portion of Land was called his Soke or Manor, in which he had his Privileges as the King had in the whole Kingdom.

The Number of Men that the Captain had under his Command in the War, was considered, when the Portion of Land was assigned him by the King and Council, for the Maintenance of himself and his Followers; from hence it is that we find several Sokes or Manors of such unequal Extents and Quantities of Lands; some containing

*Firma
Burgi, 6.*

taining but one Village, some two, some three, and some more. The Soke of *Coningsburgh* in *Yorkshire*, had in *Henry III's* time twenty eight Towns or Hamlets in its Honour or Manor, which in all Probability, was originally a Royal Manor, as its Name seems to denote, *Coningsburgh*, the King's Burgh, the King having a greater Share of Land than any of the greatest Under-Captains. The Honour or Manor of *Wye* in *Kent* granted by *William* the Conqueror to *Battle-Abby*, had twenty two Hundreds and a Half in its Soke, Franchise or Liberty, and very probably was the Estate of *Hengist* or of some of his Successors Kings of *Kent*.

*Lex Cus-
mar. 311.*

*MS. de
Situ Eccl.
Belli.*

The original *Saxon* Captains that had Portions of Lands for the Maintenance of themselves and the Men that served under them, assigned them Houses and Land for their Support, with a Reservation of some Overplus to them the Captains out of the Produce of the Farms, and this Occupancy was at first during the Pleasure of the Captain; afterwards the Husbandmen had their Farms during Life, and this Custom the *Saxons* brought over with them out of *Germany*; these Tenures were called *beneficia*, they being wholly at the Will and good Favour of the Lord. The *Normans* introduced into *England* hereditary Tenures, and those were called *Feuda*; *Cujacius* distinguishes

*Rel. Spel.
5, 6.*

stinguishes the one from the other in these Words, *Feudum differt à beneficio, quod hoc temporaneum fuit, illud perpetuum*, and our Sage of the Law, *Littleton*, says *Feudum est hereditas*, of which you will find more in the Sequel, as in Point of time proper to be discussed when I get to the Reign of *William* the first *Norman* King of *England*.

The *Saxon Thane* generally divided the Lands of his Soke or Manor into three Parts, all being his own to dispose of as he pleased towards the Maintenance of his Companions, and the *Thane* finding too great a Trouble to occupy all his Lands by Servants, and out of the Produce maintain his Men, he first reserved to himself one Part of his Land, that was adjacent to his Castle or Mansion House, for Support of his Family and Hospitality, and this was called the *Thanes Inland*, as lying *inter curtem* according to the Term given to that Part by the Feudists, as being within View of his Hall, and sometimes termed *terras curtiles*, which the *Normans* called *terras dominicales*, & *mensales*, viz. the Demeans or Lords Lands. These Lands were manured and cultivated by mere Servants, who in the time of the first conquering *Thanes*, were mostly the poor miserable *Britons*, that staid amongst the conquering *Saxons*, and became their Slaves, to do the vilest Drudgery and most servile Work, and were mere Hewers of
Wood

Wood and Drawers of Water, and were as much a Part of the *Thanes* Stock as the Cattle that were upon his Land.

Then in process of time the *Thanes* to give themselves farther Ease, and enable their Companions to maintain themselves, granted them Portions of Land freely, for them to make use of to their own best Advantage, and this Part was called Out-land, as lying out of the View of the Hall.

This Part of Land the *Thane* granted to his military Men, those that were his Companions and had served with him in the Wars against the *Britons*, this was the honorary possession of Land, without any Rent or Service, but such honorary Service as the common Band of Union and Interest required from all, which was in *Latin* termed *trinodis necessitas*, i. e. Expedition, building and repairing of Castles, Forts, and Bridges.

Rel. Spol.
17.

These were the Freemen of the *Saxons*, the *Thanes* Companions and Followers in War, and his Counsellors in the Government of his Soke, by the *Normans* termed Knights, or *Legales homines*.

Another Part of the *Thanes* Land he let out to Husbandmen under Rents and Services, the Rents were paid in the ancient *Pecunia*, viz. *Pecus*, Porks, Sheep, Beefs, &c. Butter, Cheese, Milk, Honey, Geese, Hens, Ducks, Corn, Hay, and other Necessaries of Household. I

I mention no more particular Tenures of Land here, than to shew in what Manner the Proceedings were carried on in the *Thanes Hall-Mote*, the Court of his Soke.

In the beginning of the *Saxon* Government in *Britain* there being no common Magistrate, Jurisdiction attended Land, the Government of the Manor or Village was in the *Thane*, but the Government being founded in Property, all that possessed Lands freely, had a Share in the Administration.

The Jurisdiction of the *Thane* in his Soke or Manor, was privitive or ordinary, without any Authority derived from Commission, being an original Jurisdiction, arising from Possession of Land and Men.

The *Thane* had the same Jurisdiction in his Soke, as the King had in his great Seignory, but neither of them absolute; the King in the great Seignory determined by and with the Advice of his *Thanes*, as original Sharers with the King in the conquered Lands.

And the *Thane* in the Court of his Soke or little Seignory, determined all Differences between his Men in their civil Rights, and also punished Criminals with the Advice and Consent of his Freemen; Life and Death was at first within the Jurisdiction of the *Thanes Hall-Mote*.

The *Saxons* for the better preservation of the publick Peace, introduced here the

German Friburgh and *Decenna*, whereby every ten Masters of Families, Freemen, were bound to one another, and all to the King, that the Peace should not be broken within their Limits; in the Times of the ancient *Saxon* Kings, Freemen only were bound to the Peace in the *Friburgh*, but in *Edward the Confessor's* and *William the Conqueror's* time, all Persons whatsoever, Denizens or Strangers of twelve Years old were to be in pledge. The Articles of the View of Frank-pledge are at large in the ancient Treatise called the *Mirroure of Justices*, and in several modern Books, therefore needless to be inserted here. The Articles in the *Mirroure* are larger than those in the Statute of the eighteenth of *Edward II*, which the curious Reader may compare, to inform himself of the Difference between the one and the other. The Articles in the *Mirroure* are antienter than those in the Statute.

Ll. Ed.
Conf. 20.
Ll. W. Con.
64.

Mirroure,
cap. 1.
Sec. 17.

The *Saxon* Term *Hall-mote* is partly taken from the *Britons* who called a Council or Synod *Mote* or *Gemote*; the *British* Word *Comortha* or *Gamortha*, signifying a little Court; the *Welch* use the Word for any temporal Court less than the Hundred Court; as for the Court of *Friburgh* or *Frankpledge*, by us now called *Court Leet*, where Justice was done amongst the People of that Jurisdiction.

The

The *British* Word *Gamotiba* was not wholly confined to doing Justice juridically, but extended to doing good, as being the Term made use of for an Assembly at a poor Man's House, to make a charitable Contribution for the Benefit of the poor Family, which good Meeting, is the Ancestor of our Ales, Wakes and Money Weddings kept at a poor Man's House, in a Village, to which the neighbouring Persons of Ability resort with such Plenty of good Cheer, as not only to make them merry, but also to leave some for the Support of the poor Family. Wakes on the Dedication Days of Churches have been generally kept at a poor Man's House for the Benefit of the Family; one *Gemote* was to do Justice juridically, the other to do good in the way of Charity.

The *Thane*, the chief of the *Saxon Hallmote* was a Person of such high Regard, amongst the *Saxons*, that in the time of King *Alfred*, the Restorer of Peace and good Li. Alfred, Laws to *England*, a Law was made that such as compassed the Death of the King, or of his *Hlaford*, Lord, or *Thane*, should suffer Death. The *Saxon* Word *Hlaford Swic* from *Hlaford Dominus* & *Swic Proditio*, implies there was the Crime of Treason against the Lords of *Sokes*, as well as against the King the chief Lord of all the People.

Hlaford

The HISTORY of

Hlaford is strictly a Giver of Bread or Maintenance, from whence the *Thanes* or Lords of Manors giving and granting to their *Soc-men* Land sufficient to maintain themselves and their Families, with Bread and Necessaries of Life were called *Hlafords*, from which Grants the *Soc-men* owed them Faith and Obedience.

The Author of the *Mirroure of Justices* in his Chapter of Treason, saith it is set forth in this manner, as it is found in the Rolls in the time of King *Alfred*; where *Bardolf* appeals *Dirling* who was an Ally of *Bardolf*; and this Case of Treason was between Lord and Homager; *Bardolf* was Lord and *Dirling* his Ally, Homager or Tenant. But note, this *Bardolf* and *Dirling* are not real Names mentioned in the said Rolls, but put by the Author of the *Mirroure* instead of *A* and *B*.

In *Alfred's* Law for Punishment of Treason, the Traitor against his King or his chief Lord is order'd to be punished with Death, without the Criminal redeem his Life, by purging himself according to the *Weregild* of the King if the Treason be against the King; and by the *Weregild* of the Lord if the Treason be against his Lord, to whom he is an Ally or *Homager*, and the Criminal was not only to lose his Life, but also his Estate if he did not redeem it according to the Laws of *Weregild*.

By the Laws of King *Canute* Treason against a Man's Lord is declared to be unpardonable;

Ll. Canute,
23. 54. 61.

pardonable; the Criminal shall lose both Life and Estate if he don't purge himself by the triple Ordeal.

If an Ally by homage Oath or Service, *Mirr.* kill, dismember, or deprive his Lord of ²⁴ earthly Honour, he is guilty of Treason by the *Saxon Laws*.

The *Saxon Law* in Case of Treason stood Law in *Henry I's* time; in the 12th Chapter of his Laws *Lafordswic* is reckoned amongst the unpardonable Crimes; and in the 75th Chapter 'tis determined the Criminal shall lose Life and Estate.

But soon after *Henry I's* time, the Treason against the King was distinguished from Treason against the Lord by the Term of High-treason, and that against a Lord or other Superior was termed Petty-treason.

Some of the *Saxon and Norman Lords* had ^{LL. Hen. I;} great Franchises consisting of several Ma- ^{55.} nors, which had all of them several Homages, though the Court for the whole Honour was kept at one Place, and the several Homages expressed by *ex parte Nor-* ^{4 Inst. 301.} *ton, Sutton, Easton, Weston, &c.* yet those *ex* ^{31 H. VIII} *parte's* were as so many distinct Courts, un- ^{5.} der several mean Lords that held of the noble Seignory, which was originally the ^{33 H. VIII} King's, and granted in Fee to some Noble- ^{37.} man, but such Honours are immemorial, ^{33 H. VIII} and can't now be exerted but by Act of ^{38.}

VOL. II.

T

Par-

Parliament, as the Honour of *Hampton*, *Amphill* and *Grafton* were.

S. Taylor,
94.

Nicol. lib.
vol. 3. 108.

St. Amand
78.
Spel. gloss.

Sommer-
dict.

Ll. Ed.
Conf. 35.

The *Thanes Hall-mote* was sometimes called *Husting*, both Terms implying the same, that is, a House of Pleading, the first comes from the *Saxon* Word *Healle*, a Hall or Palace and *Motian* to treat or handle a Matter by word of mouth, (*Hallimotel*) i. e. Mouth-hall. The latter (*viz.*) *Husting* comes from the Word *Hus*, *Domus* and *Thing*, *Res*, *Causa*, *Negotium* or *Placitum*; the King's *Husting* is his Court held in his Palace, now called the *King's-Bench*. The *Thanes Husting* or *Hall-mote* is what is now called *Court Baron*: The *Saxon* Word *Husting* is continued no where but in *London* that I know of. I omit what is said of *Husting* in *Edward the Confessor's* Law, taking it to be the Addition of some bold Interpolator.

The ancient *Thanes* were remarkable for their Hospitality, their Freemen and others being very often entertained in their great Hall, whither the *Resients* within the *Soke* came at any time with their Complaints when they knew the *Thane* and his Freemen were together, which being found inconvenient, the *Thanes* appointed certain Days, in which they would hear Plaints, that Parties might be under no Surprize, but come prepared to make their Defence. In some large *Sokes*, a *Hall-mote* was held
once.

once a Week, in the lesser *Sokes* once in a Fortnight, or three Weeks, or a Month, but this uncertain time was afterwards regulated by the Legislature of the Nation.

Henry I, limited the time of holding *Hall-motes* to once a Fortnight and no oftner; *Henry III*, to once in three Weeks, and then the Lords of Manors could not hold their Courts as often as they pleas'd, as the ancient *Thanes* did. When Lands escheated to the *Thane*, he frequently granted them to some of his *Resients* in open *Hall-mote*, with the Consent of his *Freemen*. Anciently the Grants were made by Words only, in the presence of the *Convassals* of the *Soke*; the *Thane*, after the conveying Words, delivering to the Grantee a Sword, a Bow and Arrow, an Helmet, a Horn, or some other small Gift in token of Delivery, Latter-ward Delivery was made by the Rod.

Ll. Hen. I.
Claus. 18
Hen. III.

King *Edgar* granted Lands to the Abby of *Glastonbury* by the token of breaking his Walking-staff athwart, giving one End to the Abbot, and keeping the other End himself; which was as good a Token, and of as great Certainty, as the cleft Sticks called *Tallies*, neither one nor the other subject to a counterfeit fraudulent counter Tally.

Jan. Ang.
54.

As Learning stole into *Britain*, and Writing came into use, Lands were granted

by written Instruments, which the King first executed, and then the Convassals of the grand Seignory signed as Consenters and Confirmers of the Grant, after the following manner; *Ego A consensi & confirmavi. Ego B consensi & corroboravi. Ego C consensi & subscripsi. Ego D consolidavi*; and such like Terms, which imply more than being bare Witnesses, their Concurrence seem to be an essential Part of the Grant necessary to the Validity thereof, and it's highly probable the *Thane* was under the same Rule for Grants of Lands in his lesser Seignory, as the King was in the grand Seignory of the Nation, where the King's Grants were confirmed by the Members; a remarkable Instance of this kind a Leiger of *Canterbury* helps us to as followeth.

Spel. Con. *Baldred* King of *Kent*, about the Year
Tom. 1. 800, granted his Manor of *Mallinges* in
 340. *Suffex* to *Christ-Church* in *Canterbury*; the
St. Amand Nobility not approving thereof, did not
 146. confirm the Grant, wherefore the Gift was
 voided, and the Church lost the Land; till
Tyrrel, *Egbert* and *Ethelwolf* his Son, by and with
 257. the Consent of the *Witenagemote* held at
Kingstone, made a new Grant of the Land
Spelman's to the Church at *Canterbury*, and from that
Works, time the Church enjoyed the Grant and
 34. the Benefit thereof.

At

At this time there was neither absolute King nor absolute Lord in *Britain*, the King at the Head of the great Aristocracy, and the *Thane* at the Head of the little one, where the chief Land-Owners attended, the one in the Parliament, and the other in the *Hall-mote* as Assessors of those Courts, and Parties to the Authority thereof.

The *Thane-Land* or *Bocland* descended to the eldest Son in case the *Thane* died intestate, and the *Thane* that was *Testamento dignus*, might devise by Will his *Bocland cuicumque voluerit*, as the Term is very frequently met with in Royal Saxon Charters made by Kings to their *Thanes*. But *Folcland* cou'd not be devised by Will, or sold without the Lord's Licence, it being then only an Estate at the Will of the Lord, or at best but an Estate for Life.

Rel. Spol.
21, 23.

Brietrick a rich *Thane* being possess'd of *Folcland*, held of *Ælfric* Earl of *Mercia*, which he had a mind to devise by his Will, voluntarily made large Gifts by way of *Heriot* to obtain his Lord's favour that his Will might stand good, as to the *Folcland* therein devised, for as to his *Bocland* he being a *Thane*, had power to devise it; *Thani lex est, ut sit dignus rectitudine testamenti sui*.

Lamb.
Kent. 491.

A. D. 1
984.

It appears in *Domeday* that *Thane* Lands might be used and disposed at the Pleasure of the Owner, without Impeachment of any other. For at *East-Burnham* in *Buck-*

Rel. Spol.
23.

inghamshire under the Title of *Milo Crispin*, *Duo Teigni homines Brietrici hanc terram tenuerunt, & vendere potuere.* And these *Thanes* were not Kings *Thanes*, but of a lesser Sort, as is implied in the Term *Homines Brietrici.*

LI. *Alfred*, 37. But though *Thanes* might sell their Land or demise it by Will, yet it was with a Restriction, for in *Alfred's* Law it is ordain'd that *Bocland* shall not be sold out of the *Family*, but the *Norman* feudal Tenant could not devise his Land by Will till enabled thereto by the Statute of the thirty second of *Henry VIII*, *Chap. 1.* but even therein limited to two Thirds.

Rel. *Spel.* 31, 32, 33. The *Saxon* *Thane* Lands were *alodium* free from all Burthens and Payments, but *Canute* introduced *Heriots* (which the Trans-

LI. *Canute*, 75. lators of his Laws render *Releviamenta*, whereas the original *Saxon* Word is *Heregeat*) which was contrived by *Canute*, it being *Militia apparatus*, he took the People's Arms in order to keep his new Conquests in Subjection, and to support the Strength and military Furniture of his new acquired Dominions. The *Saxon* *Heriot* was paid in Habiliments of War, out of the Goods of the deceased; the *Norman* Relief in Money by the Heir, that the Lord might not have *inutilem proprietatem* in his Seignory: The *Heriot* was yielded whether the Son or Heir enjoyed the Land or not, but

but the Relief was a Composition with the Lord, and paid to relieve or redeem the Land that was fallen into the Lords hands, as *renovatio & restauratio Feodi*.

Though the Lords of Seignories had original Jurisdiction, and not bounded by any written Laws; yet if the Lords were exorbitant, they were answerable in the King's Courts to their Vassals and Tenants for any Injuries or Wrongs done to them; And if the Lords did not appear in the King's Court, to answer the Tenants Complaint there, then the Court did adjudge that the Tenants or Vassals should do no Service for their Lands, till the Lords appeared in the King's Court to answer the Complaint and abide the Judgment of the Court.

The Lords had originally a most exor- Rel. Spel.
bitant Power over their Tenants, they took 60.
Victuals and all other Necessaries for furnishing their Castles: and other Lords took Provisions for their Households and Hospitality, till Compositions began to be made in Henry II's time, some in Money and some in Services, as some were to attend their Lords in Journies, and from thence were called *raad Knights*. The Tenants were also forced to entertain their Lords and Followers at their Houses and that was called *Coshering*. The Lords also exacted Tollages, Carriages and many other Matters from their Tenants, and imprisoned their

their Tenants in their Castles and held Distresses there during Pleasure, which Exorbitances were in a great Measure redressed by the *Magna Charta* of King *John*.

The Authority of the great Men in the national Council, or of Assessors in the *Hall-mote*, did not arise from the Concession of the *Thane* in the one, or of the King in the other; the *Saxon* Conquerors fought for what they could get, and divided the Spoil as joint Undertakers; Authority and Power necessarily followed the Land and Stock in those Days, when the Riches of the Nation was in the Hands of a few; the Leader to Conquest had no Money to pay his Followers, he and they lived upon what they could get, there were no *Solidi* to pay the Soldiers, the *Britons* Land and Stock paid all, and as they divided Land amongst them so did they Authority, according to Contract and Agreement made before the Conquest was attempted or enter'd upon, and the Measures of Property submitted to the general Council of Undertakers, and as to the particular Subject I am upon, the Captain to whom a District was allotted for the Support of him and his Assistants in Conquest, was not wholly his own, his Companions claimed and had an agreed Share both of Land and Power, and as said before, there being no common Magistrate, they punished Criminals and determined

terminated Plaints which naturally fell upon the Chief of every District, and his Associates, which at first was very irregular, till Time and Experience brought the *Thanes* Court to regular Proceedings in Cases criminal and civil. The Suitors have Power to hear and determine without Writs, by Warrant of Jurisdiction original. *Mirror,*
281.

In the ancient *Thanes* Court was the full Jurisdiction of Lands and Men, till the Heptarchy was reduced into one Monarchy by *Alfred's* conquering the invading *Danes*, and the other Kings of the Heptarchy.

During the Wars between the *Saxons* and *Danes* all Laws laid asleep, the Nation being brought back to the Law of Nature, Violence and Rapine spread all over the Land, the Stronger dealing with the Persons and Lands of the Weaker at Pleasure.

The long Wars between the *Saxons* and *Danes* had brought the People to such a Habit of Rapine and Plunder, that after Peace was concluded between *Alfred* and the *Danish* King *Guthron*, the People did not leave off the Habit they had got of pilfering and stealing from one another during the War; and in defending their Persons and Properties many Lives were lost.

The wise King *Alfred* who exceeded all his Predecessors in making good Laws and causing them to be duly put in Execution, finding the *Thanes*, at least too many of them negligent

negligent in the due Punishment of Offenders and Criminals against the publick Peace and Quiet of the Nation, took from the *Thanes* Court the Power of punishing Criminals, which before was in the *Hall-Mote*, and renewed the ancient *German* Friburg, whereby the *Thane* lost his ancient Privilege of punishing Criminals in his Court, till afterwards restored to some *Thanes* as shall appear in the Sequel.

Mirror, 5. King *Egbert* having divided the Nation into Shires, *Alfred* for the better Administration of Justice, subdivided them into Trithings or Lathes, Hundreds and Tithings, and appointed a Judge in each, to be Conservators of the Peace, before whom all Men were to be sworn to keep the Peace and to find Sureties.

Ll. Ed. *Edward* the Elder and *Edgar* confirmed *Alfred's* Laws of Friburgh or Decenary, and see them so well put in Execution that in *Edgar's* time Thefts and Robberies were very rare, and the Nation reduced to a State of Peace and Honesty.

Ll. Edgar,
5, 6.

In the *Folcmote*, the Alderman was Judge in the Trithing or Lathe, the Chief Judge was called *Trithing-Greve*; in the Court of the Hundred the Judge was called *Centenary*, ten Friburghs or Tithings being under his Jurisdiction, each Tithing consisting of ten Housholds, the Chief of the Tithing was called by the several Names of
Deciner

Deciner, Decanus, Friburgh-Head, Head- Li. Ed. Conf. 20.
burgh, Chief Pledge, and Titbing-man,

The ten Families stood bound to one another, and all to the King to preserve the Peace, if one of the Headboroughs broke the Peace, the other nine were to bring him to Justice, or pay his Mulct.

The *Saxon* Law of Friburgh in the *Nor-* Li. Ed. Conf. 20.
thern Parts of England (called *Tenmentale*) was a wise *Gothick* Constitution for the preventing and punishing of Manslaughter, Theft and other Offences against the publick Peace, and made use of by the ancient *Saxon* Kings, in so careful and regular Bede lib. 2. cap. 16.
 a Manner, that *Bede* says in the Time of *Edwin* King of the *North Humbers* who began his Reign *Anno Dom.* 617, it was a common Expression, *That a Woman with an Infant in her Arms, might travel from Sea to Sea without being any Ways disturbed.*

Surety of the Peace is mentioned in the Code of Law made in the time of *Hlothar* Li. Hloth.
 King of *Kent*, who began his Reign *Anno* ⁹
Dom. 674, in these Words according to the *Latin* Translation, *Si autem fidejussores dare negligat xii Solidos luat Regi, & lis sit integra ubi antea fuit*; from the Words *ubi antea fuit*, it must be concluded to be a Law in use before *Hlothar's* Code of Law, which I mention to shew its Antiquity, that it was not a new Law made by *Alfred*, but an ancient Law that had been long neglected,
 till

till received by *Alfred*, Senior to *Edward* and *Edgar*. And from the Words *lis sit integra ubi antea fuit*, it appears that if the Friburgh did not regularly hold People to Surety of the Peace, the Neglect was to be judged in a superior Court, the King's Court, to which the Courts of the County Hundred and Tithing were accountable.

Brañton
lib. 3. cap.
10.

Mirror, 8.

Every Handborough or Master of a Family was to give Surety to the Headborough for the Peace and good Behaviour of his Family, his Children, Dependants, and Servants, all that were in his Manupast *i. e.* fed by Hand of the Handborough or Head of a Family. *Brañton* says, he that is allowed Victuals, Clothes, and other Necessaries by a Person, is said to be of *his* Manupast that provides for him those Conveniences of Life; every Male of each Manupast was at the Age of twelve Years to be sworn before the Headborough to keep the King's Peace. If any Member of a Tithing was accused of an Offence against the Peace, the Headborough or chief Pledge of the Friburgh to which he belonged, was to answer for his Appearance and taking of his Trial: If the Criminal fled and could not be taken, the Tithing was to answer to the King the Mulct or Fine the Law set upon the Offence; if the Tithing was not able to answer the Fine, it was then to be

be levied upon the Hundred, if the Hundred not able then upon the Tithing.

Every Person was to be of some Tithing or other, and if Manlaughter or other Felony was committed, and a Person apprehended upon Suspicion, who upon Examination could not prove himself to be of some Tithing or Friburgh, he was looked upon as a Foreigner or Invader, and forced to abjure the Realm.

The *Saxon* Laws made particular Provisions that unknown Persons should not be entertained above a certain limited time without the Knowledge of the Peace Officers.

By the Code of Law made in the Reigns *Li. Hloth.* of *Hlothbar* and *Eadrick* Kings of *Kent*, if ^{15.} a Housekeeper entertain a Merchant-Stranger, or other Stranger three Nights, he shall answer for any Crimes such Stranger is guilty of.

By *Canute's* Laws an Host is forbid to *Li. Cnut.* entertain a Stranger above three Nights. ^{25.}

Edward the Confessor in his Law *de hosp-* *Li. Ed.* *pitibus*, forbids any Man to entertain in his *Conf. 27.* House a Stranger above two Nights, whom he will not hold to right, that is, answer for his good Behaviour, unless the Person entertained shall have a reasonable Excuse, which the Host or Master of the House is to shew to the chief Pledge, and the rest of the Members of the Friburgh; and when the Guest goes away, he shall depart in the Day

Day time, in the View of the Members of the Friburgh.

The *Saxon* Words *Cuth* and *Uncuth* in *Edward the Confessor's Law*, implies *Notus* and *Ignotus*. He that lodged with an Host one Night was termed *Uncuth* i. e. a Stranger, the second Night he was termed *Gest* i. e. Guest or Lodger, the third Night *Hogenbine*, *Agenbine*, *Homebine*, or *Hawaman* i. e. one of the Family, for whose Misdemeanors the Host must answer.

*Alfred's
Life, 110.*

Edward the Confessor's Law de hospitibus is confirmed by *William the Conqueror* in his forty sixth Law.

Certain pecuniary Mulcts and Fines being set by the *Saxon* Laws upon Manslaughter, Robbery, Theft, and other Crimes against the Peace, and not regularly transmitted to the King's *Reve*, to whom they were payable to the King's Use, was none of the smallest Inducements to the Kings to take those Offences into their own Hands, to be heard before Judges of their own appointing, who were answerable to the King for the several Fines, Mulcts and Forfeitures, and the *Tourn* had chiefly the Cognizance of Crimes *vi et armis* against the King's Peace, and only simple Trespafs left to be determined in the *Thanes Hall-Mote*.

Now I proceed to shew how some Lords of Manors obtained by Royal Favour the Privilege to judge Criminals in their *Hall-Mote*.
After

After Peace and good Order was settled in the Nation by the Wisdom and Justice of the *Saxon* Kings, they began to indulge some of their great Men with Grants of Licenses to try and adjuge Criminals in their own Courts, which tho' originally was in the *Thanes Hall-Mote*, yet being taken from them by *Alfred*, *Edward* the Elder and *Edgar*, as mentioned before, and regranted to some of them was termed the *Jurisdiction* ^{Mirror, 175.} assigned out of their *Tourn*; in which Court of assigned Jurisdiction, every Freeman of twelve Years old, was to take the Oath of Allegiance in that particular Precinct; and finding Sureties of Peace and good Behaviour, as before in the Court of *Friburgh*, was left off, and none bound but such as had offended.

Bishops, Earls, and some of the *Thanes* obtained Charters to try and punish Criminals in their own Courts, and had Jurisdiction assigned to them before *Edward* the Confessor's time, as plainly appears by his twenty first Law, entitled *de Baronibus qui suas habent curias & consuetudines*; and the next Text runs thus. ^{ll. Ed. Conf. 21.}

Archiepiscopi, Episcopi, Comites, Barones, & omnes qui habuerint Sacham & Socham, Thol, Theam & Ingfangthefe, etiam milites suos & proprios servientes, scilicet dapiferos, pincernas, camerarios, pistores & cocos sub suo Friburgo habeant: Et item isti suos armigeros, ^{Hovedon's Edit. Savil. 605.}

geros, vel alios sibi servientes sub suo Fri-burgo. Quod si cui foris facerent & clamor vicinorum de eis assurget, ipsi tenerent eos reſtitudini in curia ſua, illi dico qui haberent Sacham & Socham, Tbol, Theam, & Infantheſe.

Ll. Ed. *Sacha* is *cauſa*, and *Socha* ſignifieth a Liberty or Privilege of judging and determining Cauſes within the Precinct of the *Soke* or Manor.

Ll. Ed. *Tbol*, is a Liberty or Right of buying and ſelling within the Precinct of a Manor, paying a Fee to the Lord.

Ll. Ed. *Theam* or *Team*, is a Royalty granted by the King's Charter to the Lord of a Manor, for trying and judging his Bondmen, Neifes and Villains.

Ll. Ed. *Ingfangtheſe* is a compound *Saxon* Word of *in*, and *fang*, to take or catch, and *Theſe* a Robber or Thief, and ſignifieth a Liberty or Privilege granted to ſome Lords of Manors, to judge any Thief within their Manors.

Utfangtheſe or *Outfangtheſe*, is the Privilege of judging a Thief that comes out of another Manor.

Ll. Ed. From *Alfred's* time Criminals *contra pacem* were tried in the King's Court called *Tourn*, *Lathe* or *Leet*, and the *Thane* from his time had no Cognizance of *Crimes contra pacem*, till ſucceeding Kings granted a Branch of the Power of their *Tourn* or *Leet*

Leet to some Lords of Manors, that they might for the Ease of the People have the View of Tenants and Resiants within their Manors, which Grant being obtained from the Crown at the Charge of the Lord of the Manor from the Instance and Request of the Tenants for their own Ease and Convenience, they freely agreed to make an annual Payment to the Lord in Consideration of his Charges of obtaining the Grant of *Leet* from the King, and that annual Payment is what in some Manors is called the *Leet Fee*, *de certo Letæ*. The Bailiff can't sell a Distress taken for *Leet Fee* without Custom, but an Amercement offered may be distrained for.

Alfred's
Life, 116.

4 *Inst.*, 261.

Salkeld,
vol. 1. pag.
379.

When the Alderman, *Shiregreve* or *Tri-thinggreve* made *Turnum suum per Hundreda*, he omitted such Manors where the Lord had Grant of *Leet*, and made not Circuit and Perambulation there; the *Leet* has no Jurisdiction in Crimes but such as are so by common Law.

Lutwich,
363.

To the Kings *Tourn* belonged *Fossa*, *Furca*, Pillory, Tumbrel, and Cucking-stool, and to the Lords *Leet* the same, as being a Branch of the King's *Tourn*, and every Lord of a Manor that had Grant of *Leet*, was obliged to keep and maintain those Instruments for punishing Offenders; all Felonies at common Law were within the Cognizance of the *Leet* and there punishable. The *Stat' pillor' & trumbrel' & assis'*

51 *Hen. 3.*

VOL. II.

U

panis

Raft. Stat. 39. *panis & cervis*, is in Affirmance of the Power of *Court Leet* to punish Sellers of corrupt Victuals, &c. as in the Statute *de Pistoribus & Brafiatoribus & aliis Victualariis*, of *Edward I.*

Having made a short Essay on the Jurisdiction of *Court Baron* and *Court Leet* during the Reigns of the *Saxon Kings* I proceed to shew how it stood in the *Normans* time.

The *Saxon Thane* was by the *Normans* called *Baron*, and the *Saxon Hall-Mote*, *Court Baron*, and the *Saxon Soke* was called *Manor*, tho' in some *Manors* the Term *Soke* is still continued, as *Oswelbeck Soke* in *Nottinghamshire*, *Okeham Soke* in *Rutlandshire*, *Gressenhal Soke* in *Norfolk*, &c.

After King *William* had conquered *Harold* he seized all his great Estate, and added it to the Royal Demeans, and also seized all the *Manors* and *Lands* of those that adhered to him, which were divided amongst his Assistants, in proportion to the Share they bore in the Conquest, which was agreed between *William* and his *Norman* Lords and Captains before the Invasion of *England* was attempted; *Montgomery*, *Bigod*, *Warren*, and other great Men assisted with many Ships and Men, lesser Men brought in their *Posse* according to their Ability, and all claimed a Share of the *Saxons* Lands, as an agreed Compensation for their Expence and Hazard, of which Sir *William Dugdale* gives a remarkable Instance from

from a Manuscript in the *Bodleian* Library, in *John* Earl of *Warren*.

In *Henry III* and the beginning of *Edward I*'s time, before the Statute of *Quo Warranto*, Writs of *Quo Warranto* were brought against many of the Prelates, Nobles and other great Men, for their Liberties, Franchises and Privileges, for that partly by length of time and partly by the civil Wars in King *John* and *Henry III*'s time, many of their Charters, Records of Allowances, and other Evidences were destroyed or lost, amongst others a Writ of *Quo Warranto* was brought against *John Warren* Earl of *Surrey*, who appearing before the King's Justices to shew by what Title he held his Franchises and Manors, drew out an old Sword and told them by that Title he held them; for my Ancestors, says he, coming into *England* with *William* the Bastard, acquired their Lands by the Sword, and by the Sword I resolve to hold them against any Man that would have them, for he did not conquer and subdue this Nation of himself, but our Progenitors were Assistants and Sharers with him.

The great *Normans* that obtained the Manors, had and enjoyed with them all the Franchises, Liberties and Privileges that the *Thanes* had before them, they shared Manors and Land with *William*, and Power also, they would not lose a bit of the ancient Rights and Privileges of their Ma-

^{18 Ed. 1.}

^{2 Inst. 495.}

^{Orig. Jur. 13.}

nors; and they learning from the *English*, that the old Laws of the Land allowed of no arbitrary Resumptions, and that no Man's Property could be taken from him but by Decree of Court according to Law; the *Normans* themselves grew fond of the old *English* Laws and joined with the *English* in petitioning the King to confirm the Laws of *Edward the Confessor*, which was a Collection of the old *Saxon* Laws.

The assigned Jurisdiction called by the *Saxons* *Lath* or *Leet*, was by the *Normans* called *View of Frankpledge*, and such Manors as had the assigned Jurisdiction belonging to them in the *Saxon* Reigns, the *Norman* Lords tenaciously held and maintained, which being the same with *Decenna* and *Friburgh*, is already described.

Mirror, 52.
cap. 1.
Sect. 16,
17.

1 *Inst.* 58. The *Court Baron* is of two Natures, the one original and ordinary, the other customary.

Wood, 839. In the *Court Baron* of ordinary Jurisdiction the Freeholders are Suiters and Judges.

In the customary Court the Copy-holders are the Jury, but the Lord or his Steward is Judge.

When the *Court Baron* is of both Natures, both original and customary, then the Court Roll containeth as well Matters appertaining to the customary Court, as to the *Court Baron* of original Jurisdiction.

The Court of original Jurisdiction which is strictly speaking the *Court Baron*, is already ready

ready described in the *Saxon Hall-mote*; so I proceed to the customary Court, and give a short Account of the several Tenures derived therefrom.

The Lord as said before, divided the Land of his Manor, into two Parts, Inland and Outland, the Outland was again divided into Freeland or Knight-Service Land, and Tenementary Land.

The Holders of Freeland were termed Knights or *legales homines*, that enjoyed the honorary Tenure, they were to attend their Lords in War according to their holding, and to be Suiters and Judges in his *Court Baron*.

The other Part of the Lords Outland, the Tenementary, was of two Natures, *free Socage* and *base Socage*.

The *free Socage* rendred to the Lord *cenfum*, not *operam*, a certain Portion of Victuals and other Necessaries to support his Family and maintain Hospitality, till in *Henry II's* time Money growing a little more plentiful than before, the Lords commuted Part of their Rents in kind into Money, which was called *White Rent*, and is now the free Rent, and the Rent in kind was called *Black Maile*.

The Term *Socage* is generally taken to come from Service of the Plow, which I conceive to be a Mistake, for Tenants of *free Socage* were obliged to no vile Services,

ces; their Retribution to the Lord was Rent not Service; if the Term *Socage* took its Name from Plow, the *Saxons* would have writ it *Sulb-age*, *Sulb* being *Saxon* for a Plow: I take the Term *Socage* rather to come from *Soc* or *Soke*, and imply the Rent to be yielded by the Occupier of *Socage* Land to the Lord of the *Soke* or Manor: *Soc* is indeed *French* for a Plowshare, but if *Socage* had a positive Relation to the Plow, why should it not be *Sulb-age* as well as *Plow-almes* is in the *Saxon* Laws called *Sulb-ælmiffan*: In the League between *Edward* and *Guthron* in both *Lambert* and *Wilkins's* Edition of the *Saxon* Laws, *Plow-almes* is *Fulb-ælmiffan*, but that is only an Error in the Press, there being no such Word as *Fulb* in the *Saxon* Language, in *Canute's* Law, *Plow-almes* is *Sulbelmesse*, and farther in *Alfred's* time, *free Socage* Lands were dividable amongst Heirs Male, but Lands that performed the Service of the Plow, *i. e.* *base Socage*, were neither descendable at that time nor dividable, but at the Will of the Lord under uncertain Rents and Services, therefore *free Socage* Land must be Land granted by the Lord of the *Soke* under the Condition of certain Rent: In farther Confirmation of what I am advancing, there is a Tenure in *Socage* called *Burgage*, which no ways smells of the Plow, being a Borough Tenure that pays

Fed. Ed. 8.

Guth. 6.

Rel. Spel.

43.

pays a certain Rent to the Lord of the Borough or *Soke*.

The *Socage* that yielded certain Rent was *free Socage*, that which yielded uncertain Rent and uncertain Service was *base Socage*,

I shall give a short Account of *free Socage* Land from the time of King *Ina*, who began his Reign, *Anno Dom.* 688.

Free Socage Land in *Ina's* time paid certain Rent as particularly expressed in his seventieth Law, a Farm of ten Hides, says that Law, shall pay ten Measures of Honey, three hundred Loaves of Bread, twelve Measures of strong Beer, thirty of small, two Oxen or ten Weathers, ten Geese, twenty Hens, ten Cheeses, one Firkin of Butter, five Salmons, twenty Hundred of Hay, and one hundred Eels; this is a great Farm and a great Rent, but there's no room to question the Text.

But whilst Rent was paid in kind, I can't conceive how this *modus* of Rent could be specifically answered; some Farms could yield no Salmon, no Eels, and no Provision is made in the Law for an Equivalent by way of Commutation, for such things as the Farm did not produce; therefore I conjecture the Law did not bind down the Farmer to specifick Particulars, but that the Intention of the Law was, that a Farm of ten Hides should yield to the Lord in its

own Product, to the Value of the Particulars specifically mentioned in the Law.

These Farmers had a Continuance in their Farms only during the Pleasure of the Lord; and on the other side the Farmers might leave their Farms when they pleased, being under certain Rent, and consequently under no Bondage Service to their Lords.

2l. Ina, 65,
66.

Rel. Spel.
35.

But then the Legislature provided that the Farmers should not leave the Lords Land in a bad Condition, for the Law provides that the Farmer shall leave half his Farm sown for the Lord's Use, if the Writ of Waste be founded upon this Law, then it is ancients than *Alfred's* Survey and *liber judicarius* from whence the oldest Writs in the Register are said to be taken.

2l. Alfred,
37.

As the *Thane* Lands by *Alfred's* Law were to descend to the eldest Sons, the better to enable them to serve the King in Royal Expeditions, so *free Socage* Lands were to remain partable *inter masculos*, to enable them to increase into many Families for the more increase of Husbandmen.

Free Socage, says *Glanvil*, shall be divided amongst all the Sons, *si fuerit socagium & id antiquitus divisum*, but the eldest Son shall have the capital Messuage of his Father, allowing a Consideration to his Brothers according to Custom. *Bracton* speaking of *free Socage* Lands says, *semper solent dividi ab*

ab antiquo, and in another Place, consuetudo quandoque pro lege servatur in partibus ubi fuerit more utentium approbata & vicem legis obtinet, longevi enim temporis usus & consuetudinis non est vilis autoritas; longa possessio (sicut jus) parit jus possidendi, & tollit actionem vero Domino.

The ancient Custom mentioned by *Glanvil* and *Bracton* reach no higher than King *Alfred's* time, for in King *Ina's* which was about two hundred Years before, *free Socage* was in some Measure at the Will of the Lord, which by Concessions or Negligence in the Lords became hereditary and dividable amongst Heirs Male born in Matrimony.

In *Henry III's* time, the Bishops were instant with the Lay Peers, that they would consent that such as were born before Matrimony should be deemed legitimate as well as those born in Matrimony as to Inheritances, for as much as the Church had accepted such as legitimate: But the Earls and Barons answered with one Voice, that they would not change the Laws of the Realm hitherto used and approved, *Merton 20 Hen. III. 9. Reading on Statutes, Vol. 1. Pag. 207.*

Having given a short Account of *free Socage* Land in the time of the *Saxons*, I shall go back to shew how it was in the time of our Ancestors the *Britons, Cæsar* and

and *Tacitus* speaking of the *Britons*, say every one's Children were their Heirs, and the Laws of *Howel Dba* speak the same throughout, and so does the old *Brebon* Law in *Ireland*; there was anciently a great Coherence between the *British* and *Hibernian* Laws; and in both of them the Bastard Sons took equal Share in partition with the Legitimate, till the Statute of *Wales* of the twelfth of *Edward I*, which being a *Welch* Statute, and not in the *English* Statute Book, I shall transcribe so much of it as relates to the Subject I am upon.

*Aliter usitatum est in Wallia quam in Anglia, quoad successionem hereditatis; eo quod hereditas partibilis est inter heredes masculos, & à tempore cujus non extiterit memoria partibilis extitit. Dominus Rex non vult quod consuetudo illa abrogetur; sed quod hereditates remaneant partibiles inter consimiles heredes sicut esse consueverint, & fiat partitio illius sicut fieri consuevit; hoc excepto quod Bastardi non habeant de cætero hereditates, & etiam quod non habeant purpartes cum legitimis, nec sine legitimis, from this Statute it appears that Lands were partable by the *British* Laws; but even amongst the *Britons* the Lands of the *Ethelings* were in the Nature of Principalities, and descended to the eldest Sons.*

Mirror,
11.

Partition of free Lands was the general Custom of the *Britons* and of the *Saxons* after
after

after the Danes were subdued by *Alfred*, and Peace and ancient good Laws and Customs revived.

Free Socage Land whether it paid *Gavel*, i. e. Rent, or not, was partable in other Parts as well as in *Kent*, which may be gathered from *Braeton's* Words. *Sicut de Gavel-kynd vel Alibi ubi terra est partibilis*; by the Word *Alibi*, *Braeton's* Sense is, that other Lands besides those in *Kent* were partable, since the Conqueror's time, as in Fact they were in *Urcheffield* in *Herefordshire*, in *Clipesby* and *Billockby* in *Norfolk* in *Edward III's* time.

S. Taylor,
130, 149,
150, 151.

Placita
cor. Rege.
20 Ed. 3.

Mr. Lambert appropriates *Gavel-kynd* to the County of *Kent*, and his Etymology of the Word is, *give all kind*, to which Gingle a great Sage of the Law gives in, whereas *give all kind*, is not consistent with the Tenure of Partition; for in that Tenure, the Land of the Father is partable amongst the Children only, and Kin or Kindred imports a more distant Relation to the Father than Children. *Gavel-kynd* is a compound Word of *Gavel-rent*, and *Gecynde*, Nature, Kind, or Quality; so *Gavel-kynd*, is Land of a Rent, Nature, Kind, Quality or Condition, *genus tenuræ, & terræ*.

Rel. Spel.
43.

Gavel-kynd Land hath been often given to Hospitals in perpetual Alms and to *Gavel-kynd*; *Mr. Somner* hath published Part of a Deed to this Purpose, wherein the Donor gives

S. Taylor,
124

gives Land to an Hospital *in perpetuam eleemosynam*, and to Gavel-kynd *reddendo sibi duos denarios*, reserving to him and his Heirs the Rent or Gavel of two-pence, *in Signum Domini*, tho' he granted to the Hospital the *usum fructum*, he reserved the *Dominium*.

If Gavel-kynd Land by Escheat or Purchase come into the Hand of the King or Lord, the Tenure is absorpt, *cessante causa tollitur effectus*, by Unity of possession, the *usus fructus* becomes consolidated and made one with the Property and become *alodium*, Demean Land.

Gavel is so far from importing give, that it is in general a Rent, and applied to the several Species of Rent, as Corn Gavel or Gavel Corn, is a Rent paid in Corn, Gavel Timber, Gavel Board, Gavel Swine, Gavel Work, Gavel Penny and many other such.

Hist. Com.
Law, 173,
215.

Gavel-kynd Land and the Saxon Boc Land were much of the same Nature, being partable *inter masculos*, but in King John's time, descent of *free Socage* Lands to the eldest Son prevailed in all places, unless in such Manors where Partition had been tenaciously kept up, as generally it was in Kent and in many Lordships in other Counties.

As for Instance, *Mich. Secundo Johannis*, in a *rationabili parte bonorum*, by Gilbert Beville, against William Beville his elder Brother for Lands in Guntborpe, the Defendant pleaded, *quod nunquam partita vel par-*

partibilia fuere, but because he could not prove it, Judgment was given for the Dem-
 mandant, and by Degrees it prevailed, so
 that whereas at that time the Averment
 came on the Part of the Heir at Law, that
 the Land *nunquam partita vel partibilis ex-*
stitit: In a little time after the Averment
 was turned on the other hand, *viz.* that
 tho' the Land was *Socage*, yet unless the
 Demandant did aver and prove that it was
partita & partibilis, he failed in his De-
 mand.

Tho' the Custom of Partition was not
 alter'd by any Act of Parliament that is
 known of, yet after the Conquest from the
 ancient Custom of the Sons parting the
 Lands of the Father the *Norman* Manner
 of Lands descending to the eldest Son
 gradually came into Use here, and by
Richard I's time came into general U-
 sage.

Now I proceed to *base Socage* of the *Nor-*
mans, with which *Court Baron* is most con-
 cerned, the Villain *Socage* that yielded *ope-*
ram non censum, whose Occupiers afterwards
 became Members of the customary Court,
 and were the Predecessors of the Modern
 Copy-holders, who were at first Tenants at
 Will of the Lord, but are now established
 by Custom.

There were two sorts of Villains in Eng-^{Marr.}
land, the one a Villain in gross, who was ^{1c9.}
 im-

Selkeld,
vol 2. pag.
666.

immediately bound to the Person of his Lord and his Heirs. The other a Villain regardant to a Manor, being bound to his Lord, as a Member belonging and annext to a Manor and this latter Villain, and his Tenure I shall next treat of.

The Villain regardant to a Manor was at the Will of the Lord both as to his Continuance in his Farm and as to his Service, he knew not his Service till he had received his Lord's Commands which were not to be refused; *in quo præstatur servitium incertum, ubi sciri non poterit vespere, quale servitium fieri debet mane, viz. ubi quis facere tenetur, quicquid ei præceptum fuerit*, and the Land he occupied was termed *terra vulgi*. The Term Villain comes from *Villa* a Country Farm, wherein he was appointed to do Services.

Some of these Villain Tenants according to their artful obsequiousness to their Lords, obtained Favours to be continued in their Farms under certain Services, and some under certain Rents and certain Services, and then they became *Soc-Men*, for certain Service and certain Rent supersede Villainage and is *Socage*.

Some careless Lords suffering their Tenants from Father to Son, Grandson, and farther on, to continue their Farms upon the same descent Fine, that in time from being arbitrary, grew certain, and the Tenants claimed a customary Right, and to be enter'd in the Lord's Book upon the same
Terms

Terms with their Predecessors, so from an Occupancy that was at first wholly at the Will of the Lord, grew up a customary Right to certain Admission fine, and certain Rent, and then the Land was called *terra popularis quæ jure communi possidetur, vel sine scripto, populi tantum testimonio*: Such Tenants as had so far obtained Advantages of their Lords as to be allowed in the Lords Court to be Tenants under certain Rents, certain Services and certain Fines, rested not therewith content, but petitioned their Lords to have Copies out of the Lords Books, which being yielded to by the Lords, soon grew into a general Custom, and then the Tenant was called Tenant by Copy of Court Roll, and the Land Copy-hold, and the arbitrary Term of holding at the Will of the Lord, softened and made agreeable to the Privileges the Tenants had gained, *viz.* to hold at the Will of the Lord, according to the Custom of the Manor.

The Heir to free Land and Copy-Land, upon the Demise of his Ancestor, paid an uncertain Fee anciently for Admission into the Tenure of his Ancestor, to redeem the Land out of the Lord's Hands, which being a new Custom introduced in *Rufus's* time, was very arbitrary and irregular. *Rel. Spel.*
30.

The Claimer of free Land upon the Death of his Ancestor paid Relief for premier Seisin, an uncertain Sum for Livery and

and Seisin *i. e.* delivering Possession, and this Relief was very arbitrary and uncertain before *Magna Charta*. *Rufus* exacted 3000 *l. Sterling*, *i. e.* a Sum to the Value of 3000 *l. Sterling*, from *Robert de Montgomery* Lord of *Belesme* in *Normandy* and Earl of *Arundel* and *Shrewsbury*, for a Relief at succeeding his Brother *Hugh*, who died without Issue.

The Heir to Copy-hold Land paid an uncertain Composition by the *Saxons* called *Gersuma*, a Fine or Income, both Relief and Fine were *oblata spontanea*, free Offerings or Biddings to have premier Seisin or Admission into the Land of his Ancestor, and when accepted they were called Conventions *i. e.* Bargains between the Lord and the Offerer *i. e.* the Tenant or Farmer, the Sum paid was to relieve or take up that which was fallen into the Lord's Hands.

Anciently the Relief of a Freeman was a Horse, of a Villain an Ox or Cow. The Relief of *free Socage* is now a Year's Rent.

The Titles of the several ancient Tenures in customary *Court Baron*, are too many to be particularized in my intended Brevity, but as many of the Titles indicated the Rents and Services reserved, as Conditions of the Tenure; I shall mention some of those that are most worthy of Observation.

The

The Tenants of Manors after they had obtained the Favour of their Lords to be under certain Rents and certain Services, their Lands had Names that indicated the particular Services they were to perform, and by those Names enter'd in the Lords Books for perpetual Memory of the Services and Tenure.

When a Lord contracted with his Tenant to do him certain Services one Day in a Week, the Work having Relation to the several Seasons of the Year, if the Work was to be done on *Mondays*, the Land was called *Monday Land*; another had *Tuesday Land*, and so on through the working Days of the Week; so that a Lord that had six such Farms might have his Work done by his Tenants every Day in the Year.

*Somner
Gavel,
120.*

*Somner
Gavel,
120.*

Work-land is such Land as by Tenure is obliged to serve the Lord; the Tenant being by Contract to serve him with his Labour or Work at such times and in such Work as expressed in the original Grant; this Workland is termed in *Latin*, *terra operaria*, and sometimes *terra servilis*, and not charged with *census* or Rent, and if it be charged with a small Portion of Rent with the Services, yet if the Rent was much under the Value of the Service, the prevailing Article gave the Denomination, and it was called Work-land, contradistinct to *Gavel-Land*, which was Land sub-

*Somner
Gavel,
116.*

*El. Ins.,
66, 67.*

ject to Rent, or if to some small certain Service, yet if chiefly to Rent it was called *Gaffelland*.

Cot-Land was much the same as to Service with *Work-Land*, only this Land had a *Cote* or small House upon it, for a Cover or Shelter to the Labourers; we still retain the Name *Sheepscote*, *Hogscote*, and call the small Habitation for Mankind *Cottage*: This *Cot-Land* is sometimes called *Cotsetbland*, from *Cote*, a little House, *Setb* a Seat or Settle, and *Land terra*, i. e. an House with a small Parcel of Land appendant; and the Dwellers and Occupiers *Cotarii*, *Cotseti*, or *Cotmanni*, base Tenants that had the Appellation from their *Cottages*.

Somner
Gavel,
117.

Averland is also another Term for *Workland*; *aver* or *aver*, is a general Word or Term for all sorts of working Cattle, from whence by Corruption came our modern Word *Heifer*, now appropriated to a young one of Female-kind. The Tenant of *Aver-Land* was obliged to work for his Lord *cum averiis*, and that Work in *Latin* called *Averagium*, i. e. Work with Horses, Oxen, Wains, Carts or Carriages, to carry his Hay, Corn, &c. which Carriage within the Precinct of the Manor was called *In-average*; if the Carriage was out of the Manor it was called *Out-average*; if the Carriage was with Horses only, then it was called

called *Horse-average*; the Tenants of *Aver-Land* were called or termed *Avermanni*.

Ber-Land, is a Term for Land held by the Service of bearing or carrying the Lord's or his Steward's Provision of Victuals or the like in their Remove from Place to Place, and the Tenants of this Land were termed *Bermanni*. *Somner Gavel, 118.*

Smyth-land, in respect whereof the Tenant was bound to do the Smith's and Farrier's Office, to shoe the Lords Horses and Carriages and to find Iron for the same.

For-Land, from *Fore* a Wagon, Wain, Cart, or Carriage, the Tenant of this Land was to serve his Lord with Carts and Carriages.

For-Land also is Arable Land running transverse other plowed Lands, which is now called a *Head-land*.

Bord-Land comes from the Saxon Word *Bord*, a Board or Table, and also means a House, as *Innan Bord & Ut*, i. e. within Doors and without; *Bord-land* was such Part of the Lord's Demeans as he appointed to furnish his Table with Poultry, Eggs, Ducks, Geese, and such sort of the Produce of a rural Farm. *Bord-land* says *Braeton* is *Dominicum ad mensam*, the Land had a House belonging to it for the better breeding up of Fowls. The Occupiers are called in *Domesday* *Bordarii & Bordmanni*, and are generally placed between *villani & servi*,

The HISTORY of

servi, as for Instance, *H' de Galgow, in Facenbam ten' Herold, t. r. e. ii. Car' ter' Semp. V. vil. 7. XX bor'. 7. iiiii. servi, i. e. Hundredo de Galgo in Facenbam tenuit Heroldus Tempore Regis Edwardi, duas carucatas terræ, semper quinque Villani & viginti bordarii & quatuor servi.*

Somner
Gavel,
119.

S. Taylor,
118.

Ll. Ina,
60, 66.

Ll. Ina, 6.

Somner
Gavel
117.

Gaffel-Land or **Gavel-Land**, is Land under Rent or **Gable**, for **Gavel** is *foris gablum, quasi extra (vel præter) gablum quod Domino capitali debetur*, a Rent or Duty grown up to Custom, over and above or beyond the original Contract or Bargain. There were a Multitude of **Gavels**; in **Ina's** Laws **Bere-gafel**, i. e. **Gafel-Barly**, in the North Barly is called **Big** and **Beer**, **Ræd-gafel**, hired for Rent or Wages, **Honig-gafel**, Rent, Honey, &c. **Gafolgylden-bus**, a House paying Rent or **Gabel** or **Gafol**.

Drof-Land, is Land held of the Lord to take care of his Cattle that are pastured in **Drof**, i. e. miry or dirty Land, as Woods, Carrs, Bogs and such like Places, and to drive them from thence to Fairs and Markets, and the Tenure of that Land is sometimes called **Dryfland**, **Driftland**, and **Driveland**, and the Occupiers thereof, **Drofmanni**.

Swilling-Land, more properly **Suling-Land**, from the Saxon Word **Sulung** a Plow-Land; in the Western Parts of England, a Plow is still called a **Sul**, and a Plow

Plow-staff a Sul-paddle; a Suling-land is a Plow-land, a Hide of Land; and two Hides of Land were a Knight's Fee. To this Head may be referred Hide-land, Yoke-land, Acre-land, Rod-land, being Portions of Land let out to the Farmer, by the Hide, Yoke, Acre and Rod, and denominated accordingly.

Mol-Land takes its Name from *Molcen*, Somner, Gavel, 118. i. e. Butter and Cheese and white Meats; *Mol-Land* is Up-land in opposition to Low-land, Marsh-land, Bogland, that is, an advanced Situation of a Dairy-Farm in Rich Pasturage, which was by the Saxons called *Dunland* from *Dun* or *Dunum* a Hill, as *Branodunum* now *Brancafter*, a hilly Situation; *Mol-land* has a relation not only to *Molcen* but to *Moles*, and the Occupiers thereof were termed *Molmanni*, they paid *mollis redditus* in *Molcen*, white Meats.

Wareland is that which in *Latin* is called Spel. Gloss. 565. *Terra Warecta*, or *Terra jacens ad Warectam* (i. e.) *Terra neglecta, vel diu inculta*, by the French called *Terre garee*, old fallow Ground.

Terra Susanna is so termed from the Somner, Gavel, 118. French Word *Susanne*, signifying Stale, grown old, past the best, worn out with plowing, plowed out of heart, therefore left untilled for Pasturage till it recovers its pristine State and becomes fit for plowing again.

The Occupiers of the preceding Tenures are termed in *Domesday* by the Names the Saxons gave them from the Nature of their Duties and Services, as *Cotarii*, *Cotsetti*, *Cotmanni*, *Avermanni*, *Bermanni*, *Bordarii*, *Drofmanni*, *Bordmanni*, *Molmanni*, *Villani*, *Servi*, &c.

Som. Gav.
120, 215.

Scrudland comes from *Scrud*, Apparel or Cloathing, in modern *English*, Garment-Land, the Occupiers thereof being obliged to buy Garments or Cloaths for the Lord.

Foster-Land is so denominated from the Saxon Word *Foster*, to nurse or nourish with Food, as to bring Food or Victuals to the Lord's House for the Support of his Family, or to a Monastery for the feeding the Monks and domestick Officers and Servants.

1 *Inst.* 8.

Lex Cust.
70.

There were Lands called *Old-Astre* and *New-Astre*, *Astre*, is the Hearth of a House, and where a House with a Hearth had been upon the Copyhold a great while, it was called *Old-Astre*, and such as had a House lately built on the Land was called *New-Astre*.

Having given an Account of the Names of Lands from the Rents and Services to be perform'd by the Tenants, and of the Names given from the Nature of the Lands; I shall give a few Instances of some mean and vile Services that Tenants were to perform to their Lords.

The

The Tenants of *Thurgarton* and *Horsepole* in *Nottinghamshire*, that held in Villane Service were each of them at *Christmas* to bring a Cock and Hen to the Priory of *Thurgarton*; and every Villane Tenant gave a Halfpenny towards clearing the Mill-dam there, and was to plow three Days and to reap every other Day in Harvest; and every Neif or the Villain that took a Husband, or committed Fornication paid five Shillings and four Pence, *Marcheta*; and the Daughter of a Cottager paid half a *Marchet*.

Blount,
142.

Thoroton,
304.

Our Neighbours the *Scots* Cotemporaries with the *Britons*, who, says *Cæsar*, had a Community of Wives, had a much viler Custom introduced by their lascivious Prince *Euenus* the third King of *Scotland*, who not contented with a hundred Concubines, made a more vile Law than ever was heard of amongst the most barbarous Nations.

Buchanan
148. 290.

Grafton,
Pt. 6. p. 70.

Pryn. Parl.
Pt. 4. 102.

This *Euenus*, who was King of *Scotland* in the time of *Augustus Cæsar*, promulged a Law that he should have the first Night's lodging with the Brides of all his Nobility, and to make his monstrous Imposition the more tamely conceded to by his Nobility, he ordain'd that they should have the first Night with the Brides of their Vassals.

Hector Boetius, lib. 3.
c. 12.

This barbarous Law was made a Year or two before the Birth of *Christ*, and continued Law in *Scotland* above a thousand

X 4

Years

Years, till *Malcomb* the third Cotemporary with our *William I*, at the instance and daily Application of his *Queen Margaret*, that virtuous Lady, the Daughter of our *Edward* the Outlaw, repealed that filthy Law of *Euenus*, which in such long Tract of Time having obtained Force from the first Edict and continued Custom, that the Lords of Manors wou'd not yield up their ancient Claim without a Compensation, which was for a long time at the Arbitrary Will and Pleasure of the Lords of Manors, till *Malcomb* reduced the Fine to a Mark certain, instead of the former arbitrary Commutations, which Fine or Commutation was called *Marcheta Mulierum*, from the Marke in Silver that the King ordained to be paid in this case by the Vassals to their Lords: About the Year

Buchanan, 1080, *Buchanan* says this Fine was but half a Mark, upon Payment whereof the Vassal redeemed his Bride from the Lord; this Fine was one of the Lords ancient Aids.

Blount, 153. Whether the *Marcheta Mulierum* took its Name from the Sum of Money, or from *Mark*, a Horse, in the old *Gallick* (implying the obscene Signification of *equitare*) the Criticks and Antiquaries are not intirely agreed.

Blount 159. Some Lords in *England* claimed two *Ora's*, which in *Henry III's* time was valued at thirty two Pence, in lieu of the *Marcheta*

cheta Mulierum, or first Night's Lodging with the Bride, which Lords anciently claimed in some Manors, as appears by *placita coram Rege*, Mich. 37 Hen. III. Rot. 4.

Sir *Edward Coke* says, the worst and meanest of all Tenures was that which obliged Tenants to be Hangmen or Executioners; Persons in ancient times were hardly to be hired to such Service, wherefore Lords that had *Fossa & Furca* in their *Sokes*, used to grant Lands to be held by the Service of being Executioners. 1 Inst. 86.

In *Edward I's* time in the Manor of *Blount*, 3. *Stonely* in *Warwickshire*, there were four ^{193.} Bond-men that held each of them one Mesuage and one Quartern of Land by the Service of making the Gallows and hanging the Thieves, each of which Bond-men was to wear a red Rag between his Shoulders, upon his Upper Garment, as a Badge of their Office.

In *Edward I's* time, *Underwood* held Lands in *Brayles* in *Warwickshire* of *William Earl Blount*, 21. of *Warwick* to gather Nuts for him three Days in a Year, and not to marry his Daughter, *nec filium coronare*, i.e. make his Son a Priest without licence from his Lord. Neither Heirs Female nor Widows could marry without the Consent of his Lord, because the Lords were not bound to take homage of their Enemies, or other unknown Persons,

Many

Many jocular Tenures were introduced by the *Norman* Kings and their Barons, by Contract with their Tenants upon the original Grants. The Kings and Barons when they liked the jocular Humour of a Man, would grant him Lands upon Condition and Service reserved, to shew such Humours and play such Tricks and Pranks as wou'd make merry at Feasts and Festivals, particularly at the solemn Festivals, when the Kings and Barons publickly entertained their Tenants and Vassals, what we call keeping open House. The Barons made Grants to merry whimsical Fellows to be Jesters and Buffoons in continual Service in their Families; and to late Times, Kings and great Men have kept Jesters and Fools, as commonly called, in their Houses, to divert and make Company merry.

Blount, 11. In *Edward* I's time, *Rowland de Sarcere* held 110 Acres of Land in Sergeanty in *Hemingston* in *Suffolk* to play *Christmas* Games before the King, viz. to dance, puff up his Cheeks, making therewith a comical Sound, and to let a Fart, and to burn a Fart with a Candle.

Placit. Co. re. 39 H. 3. Blount, 79. *Peter de Baldwin* held *Carnbes* in *Surry* by Sergeanty, to be the Queen's Wool-gatherer from the Briars and Thorns on the Hedges, or pay twenty Shillings *per Annum*.

Fines Hill, 1 Ed. 2. *Peter de Spelman* held *Brokenerst* by Sergeanty to find Straw for *Edward* II's Bed.

William

William de Aylesbury held a Sergeanty in *Aylesbury* to find Straw for *Edward I's* Bed, and *Rufhes* to strew his Chamber; and to give *duas Gantas*, i. e. green Geese, when the King came to *Aylesbury*. Blount, 28.

Lords of Manors had also such sort of Tenures as the Kings had.

From Tenures I proceed to show a little further than already shewn, how Tenures arose from original Contract and subsequent Grants. The oldest *Saxon* Grants as said before of Kings and *Thanes* were made by word of mouth in the Presence and with the Consent of the Convassals of the great or little Seignory, the King with the Consent of his *Thanes* in the National Council and the *Thane* with the Consent of his Freemen in the little Seignory or *Hall-mote*.

In a Fragment of an old Register of the Church of *Canterbury*, mention is made of a Grant to that Church by *Witbred* King of *Kent*, wherein for the Good of his Soul, he grants with Consent of his Nobles, Immunities and Freedom to their Possessions from all Tallages and publick Tributes, and though the Charter was written (Actuaries then being Masters of Writing) yet the same Fragment says, that King *Witbred* executed the Charter by only affixing thereto the *Cross* in the presence of the Nobles of his Kingdom of *Kent*, because he could not write his Name: This Charter is mentioned Mabillon, 18.

tioned to be made in the eighth Year of his Reign, viz. A. D. 700.

In King *Edgar's* time Grants by word of mouth were wholly left off, and all were in writing, and those of Kings were called by the several Names of *Mandatum, Rescriptum Regium, Diploma, Charta Regia, &c.*

Mabillon,
3. *Epist. passim.*
Madox,
Pref. xvi.

The Grants of the *Thanes* were called by the several Names of *Libellus, Literæ, Epistola, Syngrapha, Chirographum, &c.*

The *Syngraphum* is properly a Writing in two Parts between Debtor and Creditor, Grantor and Grantee, consisting of a Part and Counterpart, a Script and Rescript, being twice writ upon the same Piece of Paper or Parchment, inverted, and in the Middle, between the two Parts of Writing, the Word *Syngrapha* in capital Letters, through which the Writing is cut Indenterwise, and in some old Conveyances a few of the first Letters of the Alphabet are writ in Capitals, and cut through as the Word *Syngrapha*.

Spel. Gloss.
133. 310.
449.

The *Chirographum* is properly but one Part thus described by *Ingulphus*, viz. *Chyrogrophorum confectioem Anglicanam, quæ antea usque ad Edwardi Regis tempora, fidelium præsentium subscriptionibus, cum crucibus aureis, aliisque sacris signaculis firma fuerunt: Normanni condemnantes, Chirographa, chartas vocabant & chartarum firmitatem cum ceræ*

Ingulphus,
504.

cerae impressione per uniuscujusque speciale Siggillum sub instillatione trium vel quatuor testimonum astantium conficere constituebant. *Mabillon* disallows the Change mentioned by *Ingulphus* to be total, as well he may, for the Word *Chirograph* is still in use, and mentioned in *Westminster*, the Second; and the *Chirographers Fees* are limited by the Statute of *Henry IV.*

Mabillon,
6.

13 *Ed. I.*
44.

2 *Hen. IV.*
8.

Mabillon says the old *Chirographa* were cut Indenturewise as well as the *Syngrapha*; but Sir *Henry Spelman* says he never saw any Indentures older than *Henry III's* time.

Spel. Gloss.
310.

Grants and Feofments of Freehold made by the Barons and Lords of Manors before King *John's* time, concluded with *his testibus*, who were their feudal Tenants, whose Consent was usually taken if not necessary to the Validity of all Grants of Lands.

S. Amand.
168.

Before King *John's* time the Kings signed Grants in the Singular number, *his testibus*; but that King and his Barons not agreeing, he in an evasive manner stiled himself in the Plural number (*nos*) as if the Barons had consented, who in Fact did not.

In the ninth Century, Deeds, Grants and Conveyances of Free Lands were enter'd or inrolled in the Shire Book in publick *Shire-mote*, after Proclamation there made for any to come in that could claim any Right to Lands conveyed if no Objection was made,
the

18 Ed. I. the Conveyance after Proclamation and Inrolment, was irreverfable, as is now the modern Affurance by Fine with Proclamation and Recovery in the Common Pleas or Court Baron.

In Charters, Deeds, Grants and Conveyances of Lands before *Edward I's* time, the Witneffes were named in the Body of the Deed as Consenters with the principle Grantor, and the Deeds were executed, fome in the County Court, where the Knights and Freemen of the County being Suiters of Court were ready at hand to be Witneffes and Consenters to Grants and Conveyances there executed. Such as were executed in Court Baron, where the Freeholders of that Seigniory attended as Suitors of Court, included the Names of fome Freemen, as Witneffes and Consenters to the Conveyance.

In ancient times Deeds conveying Freehold, were not executed as of late in a Lawyer's Study or private Houfe: It can't be prefumed fo many of the great Men of a County whose Names are in fome ancient Deeds, cou'd be drawn together from remote Parts of the Country to a private Houfe, there to witness and consent to a Conveyance for the foie Advantage of another.

Plaints and Trespaffes being heard and determined in Court Baron, Counsel pleaded for
for

for their Clients there as in the superior Courts; and Fines were set *pro stultiloquio*, which were no other than Mulcts imposed by the Court for barbarous or disorderly pleading, from whence afterwards arose the common Fine, *pro pulchrè placitando*, which was indeed no other than a Fine for want of it, and to have leave to mend Pleadings; and as the Justices in *Eyre* and Suitors in the County and Hundred-Courts and Courts Baron, used to set Fines at their pleasure upon Plaintiff and Defendant, and not upon the Counsel for vicious Pleading; that Grievance was redressed by the Statute of *Marlbridge*, which forbid uncertain Fines for vicious Pleadings and Amendment thereof; but certain and moderate Fines for vicious Pleading, and for fair Pleading by way of Amendment in the inferior Courts, are not taken away, they growing up by Custom and Consent; and in some Courts Baron the Custom has been continued to modern Time to set moderate Fines for *Beaupleader*, i. e. for want of good pleading, or for Licence to amend vitious pleading.

In *Page 573*, mention is made of two sorts of Villains, the Villains Regardant of a Manor and the Villains in gross; the former are already described, so now I proceed to the latter.

The

Hist. Com.
Law, 150.

Mirror, 34.
259.

52 Hen. II.
11.

3 Ed. I. 2.

2 Inst. 122,
171.

*Cowel, vo-
ca Servi,
Salkeld,
vol. 2. p.
667.*

*Spel. Gloss.
352.*

Nithardus.

The Villain in gross was such a servile Person as was not appendant or annexed to the Land or Manor to go along with the Tenure as an Appurtenance of it; but was like the other personal Goods and Chattels of his Lord, and at his free Pleasure and Disposal. These Villains worked upon the Lords Inlands his demean Lands, and were direct Bondmen or Slaves, which the ancient Saxons called *Lazzi*; they yielded *operam non censum*, having no Interest at all in the Land they tilled, the Product thereof being wholly for the Lord's Use, they having no Benefit of their Labour, were, as we say, Eye-Servants, very negligent and slothful when their Masters Eye was not over them, from whence we call a slothful slow Workman, a lazy Fellow, from the Saxon Word *Lazza*, and the Latin Word *Lassus*.

In *Domesday* the three lowest Degrees of the People stood in this classical Order; *Villani*, *Bordarii* or *Bordmanni* and *Servi*, the latter were direct Slaves, of which the poor Britons that staid amongst the conquering Saxons were the greatest Number, they and the Children born of them belonged to the Lord of the Soil like the rest of the Cattle or Stock upon the Lords Demeans, and the Lords could give them away, or sell them as they did their Cattle with Vouchers and Witnesses, and cou'd
even

even kill them at pleasure with Impunity, till *Ethelred* in his Constitutions prohibited selling any Bondman that was a Christian, and so did *Canute* in his Laws. This lowest Degree of People were called *Servi*, non à *serviando*, sed quia *servabantur à Dominis*, by the good Laws that were made to limit the absolute Power the Lords had over their Slaves. *William the Conqueror* also in his Laws forbad selling a Servant out of the Nation. The *Servi* mentioned in *Domesday* are the Villains in gross, and the Lords *Villani* were such as held some House or Land, burden'd with Services, and went with the Lordship as *Villæ & Glebæ adscripti*, i. e. regardant Bondmen or Servants that by their Sedulousness obliged their Lords, were often rewarded with Advancement and put into Farms, under the Tenure of certain Rents and Services, or uncertain Rents and Services according to the Degree of Favour they could obtain.

LI. *Canut.*

LI. *Hen. I.*
75.

LI. *W. Com.*
65.

In *William the Conqueror's* Code of Law we find a great Encouragement to the Industry and good Behaviour of Servants, for therein is ordained, that such Servants as have served diligently and faithfully for a Year and a Day in a Royal City, Borough or Castle, shall from that Day be made free.

LI. *W. Com.*
66.

Mirr. 111.

When Bondmen had obtained the Favour of their Lords to be made free, they

Eng. *Tacit.*
vol. 2. P. 58

VOL. II,

Y

were

were said to be manumifed from the *Latin* Word *Manumiffio*, which anciently was freeing a Bondman by the Lord's laying his Hand on the Bondman's Head and shoving him away, or by giving him a box on the Ear and shoving him away from him, as the last time he will strike him as a Servant: This Form is for the *Nativus* the Villain in grofs that is born a Slave, and for the Bondman that bound himself to his Lord by Covenant.

William the Conqueror in his sixty fifth Law directs the Form of making a Servant free: The Lord is to take him by the right Hand and deliver him to the Sherif in open County, and to declare him free from all Bondage by Manumiffion, and that he is free to go his way; and the Lord shall deliver him a Lance and a Sword, from which time he becomes a Freeman. This is somewhat like *Cæsar's* Account of the *Gauls* and *Germans* manner of admitting their young Men into their Councils, which was by the Delivery of a Partisan or Spear, and then and not before they were Members of the Commonwealth: The *Britons* followed the *Gauls* their Ancestors, in dubbing young Men with a Partisan or Spear when they were judged to be of Ability of Body to undergo the Fatigues of War. The *Saxons* in *Britain* also met always in Council armed, and none but the

the original Sharers were allowed to bear Arms, which was an Ensign of Freedom, and of being Members of the Commonwealth, and these ancient Presidents had King *William* for his Law. These Manumissions were for meer Servants that had no Interest at all in Land, termed in *Domesday Servi*, and also for Bond-Tenants that were obliged to uncertain Services.

Instead of the aforesaid Forms the Lords in latter times gave their Villains and Bondmen that they intended to favour with Freedom, Charters of Manumission under their Hand and Seal, therein particularly mentioning the Manner of the Freedom granted, and very proper and right it was that it should be in Writing, to discharge the Villain of the Services due to the Lord, and written in his Court-book; proper also for the Bondman who was to do such Services for his Lord, as were contracted between the Lord and his Tenant: Contracts in Writing ought to be discharg'd by Writing.

Villénage was a great while wearing out before 'twas quite extinct, Lords willing to take Money, and Tenants willing to give, to obtain Freedom from arbitrary and uncertain Services: Though Villénage was never repeal'd by any Law, yet it's quite worn out: The Villain hath contracted with his Lord to pay him certain Rent in lieu of Services, to pay *Marchetam* to have the

liberty to marry his Daughter or Sister, and so grew Villenage into Copyhold by Richard II's time, tho' the Terms *Nativus*, *Villanus*, and *Bondmannus* continue in the Rolls of Court Baron.

Dr. Cowell in his *Interpreter of Terms in Common and Statute Law*, Voce Manumission, hath published a Form of Manumission by Archbishop Peckham granted to one of his Bond-tenants in Edward I's time, in the Year 1288, which concludes: *In cujus rei testimonium, &c. His testibus, Domino Tho. de Marines, Rogero de Leukenore, Rogero la Ware, Will. Mauke, Militibus, &c.*

I having an Original Manumission since Richard II's time granted by Thomas Goodrich Bishop of Ely and Lord Chancellor of England, instead of *his testibus* have the Confirmation of the Dean and Chapter of his Church of Ely, the whole being very particular I transcribe it *verbatim*.

Omnibus Christi Fidelibus ad quos presentes Literæ pervenerint. Thomas miseratione Divina Elien' Episc' Salut' in Dom' sempitern'. Sciatis me pefat' Thom' Elien' Episc' manumississe, liberos fecisse, & ab omni Jugo Servitutis Villenagii, nativitatis & bondagii ac pro me & Successoribus meis dimississe, liberasse & exonerasse per presentes Johannem Vyncent de Shipdham in Com' Norf' patrem, & Godfrid' Vyncent, Henr' Vyncent, & Willielm'

Williellm' Vyncent filios dict' Johan' Vyncent de Shipdham pred' nativos meos ad manerium meum de Shipdham pred' in Com' pred' spectantes & regardantes & totam sequelam eorundem Johan' Godfrid, Henr' & Williellm' & eor' cujuss' procreat' et procreand' imperpet' ac iisdem Johan' Godfrid, Henr' et Williellm' ac eor' cuilibet ac sequel' sue procreat' et procreand' plenariam libertatem dedisse et concessisse pro me et Successor' meis per presentes. Volentes & ulter' concedentes pro me & Successor' meis, quod iidem Johan' Godfrid, Henr' & Williellm' ac eor' quilibet cum tot' exit' Corpor' suor' ac eor' cujuslib' cum tot' sequel' sua procreat' et procreand' sint lib' et lib' conditionis & ab omn' Jugo Servitutis Villenagii nativitat' et bondagii sint exempti, exonerati et imperpet' relaxati ac eor' quilib' sic exempt' exonerat' & imperpet' relaxat. Ita quod nec ego predict' Episc' nec Success' mei nec aliquis alius pro nobis seu nomine nostr' aliquod Jus titul' seu clamen' in predict' Johan' Godfrid, Henr' & Williellm' ac eor' quolib' vel de sequel' sua procreat' seu procreand' vel in bonis catallis seu tenement' et terris suis aut eor' cujuss' nomine seu causa alicujus servitut' villenagii nativitat' et bondagii exigere, clamare, vendicare aut alienare poterimus aut in predict' Johan' Godfrid, Henr' & Williellm' nec eor' quemlib' nec aliquem de sequel' sua procreat' seu procreand' seisire, molestare, gravare, perturbare seu inquietare po-

terimus — in futuro sed ab omni inde Juris et proprietatis titulo, exactiōe et demand' sumus totaliter exclus' per presentes. In cujus rei testimonium Sigillum meum presentibus apponi fecimus. Dat' in Hospitio nostro apud Holborn, ultimo die Februarii anno regni Dom' nostræ Mariæ Dei grat' Angl' Franc' et Hibern' Reginae, Fidei Defensatricis, et in terr' Ecclesiæ Anglican' et Hibern' supremi Capituli primo. Et nos Decanus et Capitulum Ecclesiæ Cathedralis sanctæ & individuae Trinitatis Elien' habito inter nos de et super præmiss' Diligent' ac Sufficient' tractatu omnia et singula predict' venerabilem prem' nom' uti permittitur facta et concessa, rata & grata habentes quatenus in nobis est, et ad nos attinet plena deliberatione approbamus, ratificamus et confirmamus per presentes. In cujus rei testimonium Sigill' nostrum commune presentibus est appensum. Dat' quoad nos apud Ely in domo nostra Capitulari decimo tertio die mensis Marcii, Anno Regni Dom' nostræ Mariæ, Dei grat' Anglie, Francie et Hibernie Regine fidei defensatricis primo.

This Manumission has an Indorsement on the Backside signed by the Lord's Steward testifying it to be inrolled in the Rolls of the Court Baron of *Shipdam* and by the Supervisor of the said Manor, which Indorsement bears Date in the fourth Year of Queen *Elizabeth*.

Now I ptoceed to give a short Account of some particular Privileges claimed and enjoyed by Lords of Manors, as *Waives*, *Strays*, *Treasure-trove*, *Deodand*, *Ejſcheat*, *Heriot*.

Waives are Goods *waived*, of which no Ll. Ina, 74: Owner is known, and are to be taken into Custody by the King's Officer, or by the Bayliff of the Lord of the Manor, if the Lord hath *Saca* and *Soca* either by Prescription of original Jurisdiction, or by Grant from the Crown; but the Lord must cause the Goods to be cried in the adjacent Market or in Church-yard, and if any Person can make a fair Claim to the Goods within a Year and a Day, he shall have them, paying reasonable Coſts and Charges; but Britan. cap. 17. note, the Year and Day bears date from the Day of the first Publishing or Crying.

Extrabura, *Eſtray* is under the ſame Management with *Waives* by the Laws of King *Ina*, and is to be delivered to the Challenger if the Lord and Suiters of Court Baron be convinced of the Juſtneſs of his Claim.

Strays are to be cried twice or thrice in adjacent Markets, and if an Owner don't challenge them within a Year and Day from the time of ſuch Crying, they become the Lord's own.

If an Owner claim a Stray within a Year 27H.VIII. and Day, he muſt pay for the Keeping and cap. 7.

the Charge of Crying, Poundage and Marking according to the Custom of the Manor.

If the Lord works a *Stray* he is not to be paid for its keeping, the Work answers for the Food, but the Lord may cause a Cow to be milked within the Year and Day, it being for the Benefit of the Owner the Cow should be kept with milking.

Wood. 367. If *Stray* Cattle be not proclaimed, the Owner shall have them without paying Poundage or Pasturage.

Waives and *Strays* were anciently the Lord's, but now are the King's by his Prerogative, in all Places and Manors where he hath not granted the Lords thereof that Branch of his Royal Prerogative, unless the Lord can prescribe to them.

Ll. Athelstan, 10.

Ford. Alf. & Guth. 4.

Our *English Saxon* Legislators took special care to prevent all Frauds and Cheats, and appointed Vouchers to be produced by all Sellers of Cattle, and that none should be privately sold but in the Presence of a chief Magistrate of a City or Borough, the Priest of the Parish or the Lord of the Manor where the Cattle were sold, or some credible Witness; If any Person transgressed against this Law, his Forfeiture was thirty Shillings, and the Lord of the Manor was to seize the Cattle that were sold contrary to Law, and keep them till a right Owner proved a just Title to them. This Law of *Athelstan's* made Lords of Manors Trustees

to

to the Owners of unknown Cattle, and Custom gave them a right to them after a Year and a Day.

By the Laws of *Edward the Confessor*, Li. E. Com. Lords of Manors that had *Tbol* in their Jurisdiction, had a Liberty to allow of buying and selling within the Precinct of their Manors; the *Saxon* Word *Tbol* implying *Tbolonium* or *Telonium*, i. e. Toll, they might take Toll of Buyers and Sellers, which was to testify the Bargain, private Contracts being forbidden. Mirror, 14.

Money, Cattle or other Goods found in a Town shall be brought to the Lord of the Manor, who shall take them into his Custody, and give notice to the adjacent Town, and if any Persons lay claim to them, the Right shall be tryed in the Lords Court if he has *Saca & Soca* in his Jurisdiction. Li. E. Com. 21, 24.

I proceed now to show how *Treasure-trove* went anciently.

Money found in the Earth called *Treasure-Trove*, signifies in Common Law, *veterem depositionem pecuniæ, cujus non extat memoria, ut jam Lominum non habet*: This the Civil Law gave to the Finder according to the Law of Nature, but the Law of *England* to the King, as a Branch of his Prerogative. Vide Hadrian's Law, X. 390.

The Emperor *Hadrian's* Constitution Bernard, about *Treasure-trove*, was, that if the Party 65. found

found it in his own Ground, he should have the whole to himself if he found it in another Man's Ground, he should give a Moiety of it to the Proprietor of the Ground in which it was found: If the Treasure was found in publick Ground, he should share it equally with the *Exchequer*.

LI. E. Com.
14.

By the Laws of *Edward the Confessor*, Treasure found in the Earth belong'd to the King, except the Money was found in the Church or Church-yard, and then all the Gold was the King's and half the Silver, and the other half of the Silver was the Goods of the Church where it was found, *quod non capit Cbristus, capit Fiscus*.

LI. Hen. I.
10.

Amongst the *Jura Regis* in *Henry I's* Laws is *Fyrderinga*, forte (says *Sir Henry Spelman*) *Theſaurus inventus*, he writing it *Fynderinga*, and *Sir Edward Coke* also spells *Fynderinga*, and from the *Saxon Word Findan* to find, makes it Treasure found, whereas in the Text of *Henry I's* Law it is *Fyrderinga*, so these two great Men correcting the Text of the Law, make a Word, and then find out the Etymology of the Word of their own making; who instead of explaining the Law make a very needless Tautology in it, *Theſaurus inventus* being in the Law within ten Words after the

Mirror, 36.

Word *Fyrderinga*, which is placed there amongst its Concomitants of *Saxon* Words, that no single *Latin* Word expresses, viz.
Ham-

Hamsocna House-breach, *Forestal* obstructing the Highway, *Flemenfirm* feeding or sustaining a Fugitive; these Terms imply the Mulcts or Fines for these Offences, which of right belong to the King, and as writ in the Law *Fyrderinga* is more likely to mean a Preparation for War, from *Fyrd* an Army, and the Neglect thereof is finable at the King's Pleasure, and termed *Fyrd-wite*, a Fine for not going out to War at the King's Call; and of this latter Opinion is Dr. Cowel.

Somner, Dict. voce Fird-wite.

Cowel, voce Fyrd-*ringa*.

But to return to *Treasure-trove*, which before King *Alfred's* time belonged to the Lord of the Soil, but when that King took from *Thanes* the Punishment of Criminals and assign'd it to the *Tourn*, *Treasure-trove* went along with it into the King's Court, the Enquiry whereof before was in the *Thanes Hall-mote*; but *Alfred* order'd Coroners to be chosen in every County, and that *Treasure-trove* should be under their Inquiry, and then the Finder might plead that he himself hid the Treasure, or such an one he remembers to have hid it, and such like; and the Statute *de Officio Coronatoris* confirmed the ancient Law of committing the Inquiry of *Treasure-trove* to the Coroner.

Mirror, 7. 38, 43.

4 Ed. I.

Treasure-trove is in the King at this time, if the Lord of the Manor where it was found hath it not by special Grant or Prescription.

Deodand,

Deodand, i. e. *Deodandum* is when any moveable thing inanimate, or Beast animate doth cause the Death of any Man by Mischance, in any County of *England*, but not upon the Sea or Salt Water, tho' it be in an Arm of the Sea that is in the Body of a County; but if one falls out of a Vessel in fresh Water the Vessel is a *Deodand*; the *movens ad mortem* is a *Deodand*, as the Horse that throws a Man and kills him is a *Deodand*; if a Person be killed by a Cart-wheel running over him, not only the Cart-wheel, but the Cart and Horses are *Deodand*, they all moving to the Death of the Person; if a Workman be felling a Tree, tho' he gives notice the Tree is near falling, yet if a Stander-by be killed by the Fall of the Tree, that Tree is a *Deodand*; But if a Person be wounded by a Fall from a Horse, the falling of a Tree or otherwise by mischance, and does not die within a Year and Day, in such case there is no *Deodand*.

The *movens ad mortem* is forfeited to God as the Price of Blood, and to be disposed of in charitable Uses by his Vice-gerent, or by some Person thereto deputed: Several Lords of Manors have a Right to *Deodands* Wood. 365. by special Grant, but can't claim the forfeited Goods by Prescription, for the Goods are not forfeited till the Matter is found of Record,

Escheat

Escheat (comes from *Escheat*, *Eschier* to Wood, 221. fall) is when Lands fall by Accident to the Lord of the Manor of whom they are holden, for want of Heir general or special to inherit them; but before the Lord enters, the Homage ought to present it. Corruption of Blood makes the *Escheat* to the Lord upon Attainder of Felony, because the Estate cannot descend, but the King shall have his Year and Day and Waste before the Free-land shall come to the Lord by *Escheat*. But the Lords of Manors frequently compound with the King for his Year and Day and Waste.

Heriot, or *Heregate* from *Herus* Lord, and Wood, 218. *Gate* best, is a Render made at the Death of the Tenant to his Lord of the best Beast or other thing, found in the Possession of the Tenant deceased, or some other which the Lord may seize though it is in some Place out of the Manor, for it is the Lord's own proper Goods by the Death of the Tenant, therefore he may seize it wherever he finds it. *Heriot* Service is reserved in the original Grant, but *Heriot* Custom is due by Lex Cust. 238. immemorial Custom.

Pound is an Appurtenant to a Manor; if a Wood. 328. Beast be brought to *Pound Overt*, neither Lord nor Impounder are obliged to feed them or give notice to the Owner, but if the impounding be in any other Place, the Owner must have notice, that he may give the
the

the Cattle Food. He that impounds Cattle must not work or use them unless for the Benefit of the Owner, as by milking a Cow impounded or distrained, as is before mentioned.

Rel. Spel. 3. By-Laws were anciently made in Court Baron, which the *Germans, Goths, Swedes, Danes* and *Saxons* called *Bilagines*, from *By* or *Burgh* a Town and *Lugben-Law, Burgh-Law, Town-Law*, made and agreed between the Lord and his Tenants. The several Courts Baron being so many separate Jurisdictions, had different Laws and Customs, which produced great Variety and Uncertainty of Law, till the Legislature interposed, and out of that Hotchpot the *Saxon Kings*, by Acts of Legislature brought Law to some Certainty, which Acts not being upon Record, are reckoned as common Law.

Wood. 341. Court Baron is an inseparable Incident to a Manor, and must be held within the Precinct of the Manor; but the Lord may admit Copyholders upon voluntary Grants, Surrenders or Descents out of his Manor in what Place he pleases, and may give Copyholders Licence to fell Timber, to alien Copyhold by Deed, or to demise Copyhold for Years. If these Favours are not customary in a Manor, yet the Lord may grant them, they being to Nobody's Prejudice.

The

The Custom of a Manor is a Law not written, but established by use, and practis'd time out of mind within a Manor. Custom is the Life and Soul of Copyhold Estates, for if Copyholders break their Custom, they are subject to the Lord's Will: The Custom must be time out of mind, for a Copyhold can't begin at this Day, for that must be before time of Memory, viz. before the Reign of *Richard I*, Custom is, *Jus non scriptum*, grown up by Degrees.

Court Baron may make By-laws by Custom as well as Court Leet, and add a Penalty upon the Breach of a By-law, which can't be affeer'd, for a Penalty differs from an Amerciament. Wood. 846. Danvers's Abridg. 457.

The Method of Punishment in Court Baron is by Amerciaments, which are incident to Court Barons as well as to Court Leets.

After the Homage have presented Offences, the Steward can't amerce without three Affeerors are sworn to affeer or moderate the Amercement, and then the Lord may have an Action of Debt in his Court Baron for Amercements affeer'd, and the Suiters are Judges. And upon Offences in the King's Court Amercements are to be set *cum misericordia* by a Jury, to which purpose *Glanvil* writes thus: *Est autem misericordia Domini Regis, quò quis per juramentum legalium hominum de viceneto eatenus amerciendus* Mirror, 229. Glanvil, lib. 9. c. 11. Mainwood, Pt. I. 166.

*endus est, ne quid de suo honorabili contene-
mento amittat*; and *Bracton* to the same
Sense, *salvo contenenento suo*, and *Fleta* to
the same purpose, only instead of *contene-
mento* uses the Word *continentia*. The Term
Misericordia not only means that the Of-
fender is at the Mercy of the Lord, but
also that the Amercement should be very
moderate, rather less than the Offence, as
appears in *Magna Charta*; and if an Of-
fender be unreasonably amerced in Court
Baron or other Court that is not of Record,
there lies a Writ called *moderata misericor-
dia*, directed to the Lord or his Bayliff, com-
manding that they take moderate Amerce-
ments. A Fine is assessed by the Court,
but Amercement is assessed by the Country.

The Lord in his Court Baron can punish
Offences and Misdemeanors committed with-
in his Precincts, as for Non-performance
of Customs, Breach of By-laws, &c. The
Lord may decide Controversies about the
Title of Copyhold Lands lying within his
Bounds, where he may redress Matters as
a Chancellor in Equity, may hear Complaints
of Trespass, Debt, &c. under forty Shil-
lings, prove Testaments, commit Admini-
strations of Persons dying intestate within
the Manor.

If Issue be joined betwixt Party and Party,
there must be twelve where the Trial by
Jury is by Consent. The Process is the
same

Bract. l. 3.
P. 116.
Fleta, l. 1.
cap. 43.
*Magna
Charta.*

Inst. 126.

Chap. 14.

Lex Cusht.
18. 135.

same as in the County Court, by Distress infinite; Execution is only by Distress and Impounding till the Party is satisfied; there is no Power to sell or deliver the Distress to the Party, neither is the Body to be taken in Execution.

The Court Baron or Freeholders Court is no Court of Record, neither is the County Court or Hundred Court, they being but Courts Baron. A Court not of Record, is either where it can't hold Plea of Debt or Trespass, if the Debt or Damages amount to forty Shillings, or of Trespasses *vi et* Wood. 768.

armis, or where the Proceedings are not according to the Course of the common Law, and where the Acts of the Court are not enroll'd in Parchment. A Writ of Error lieth not upon the Proceedings and Judgments of a Court that is not of Record, but a Writ of false Judgment lies against County Court, Hundred Court and Court Baron. Mirror, 299.

Every Copyholder may be impleaded in the Court Baron by Plaint, yet the Cause depending may be removed by the Plaintiff by * *Tolt* to the County Court, and from thence by *Pone* into the Common-Pleas: * Tollere Loquelam. Mirror, 249. Co. 9. Rep. Pref. 13. F. N. B. 69. Wood. 844.

The Defendant may have a *recordare facias* into the King's-Bench or Common-Pleas. In Court Baron a *levari facias* may be awarded, if there is a Custom in the Court so to do, but the Goods cannot be sold without there be a By-law or Custom of the Manor for it.

The HISTORY of

A Common Recovery may be had in Court Baron if it be the Custom of the Manor.

The Copyholders Court or Customary Court is now a-days of most use, the Freeholders Court having lost most of its Business, Lawyers and Attornies not finding an account in giving attendance there for one or two Cases, and the Parties finding it difficult to have the Assistance of Lawyers there, from these and other Causes, most Cases of Moment went by degrees into superior Courts, most Lawyers voluntarily attended where most Business was.

The Copyholders Court or Customary Court is to be held upon some Part of the Manor, or there called and adjourned to some other Place, is for making voluntary Grants upon Escheats and Forfeitures for Grants and Admittances upon Descents or Surrenders on Presentment of the Homage or Jury: The Homage may enquire of all Persons that owe Suit to this Court and make Default and present their Names, and enquire of the Death of Tenants since the last Court, and who is the next Heir: Of fraudulent Alienation of Lands to defeat the Lord of his Profits: Of Rent Custom, or Service withdrawn: Of Lands concealed or used without Licence of the Lord: Of Escheats and Forfeitures: Of Incroachments on any of the Lands of the Lord without Licence: With-holding Court Rolls, Rentals

tals or other Evidences appertaining to the Lord: Of Mortmain: Letting Copyhold Land for longer time than a Year and a Day without Surrender: Alienations of Copyhold by Deed. In most Manors Copyholders have a customary Right to cut down Timber growing on the Copyhold for Reparation of the Copyhold Tenements; and though he can't use the Tops in his Repairs, the Law allows him to take, top, lop and bark and sell them towards defraying the Charge of Reparation. Cutting down of Trees by Copyholders without Custom or Licence; And if Copyholders have a Right by Custom of a Manor to fell Timber on the Copyhold, the Homage ought to claim that Right every Court to keep in memory their customary Right in that case: To present also a Copyholder that suffer his Houses to decay for want of due repairing them: And Surrenders by Copyholders since the last Court to the Use of another, and not brought into Court: And Suit not performed at the Lord's Mill by reason of Tenure; and fishing, hawking or hunting within the Liberty of the Lord without Licence; and Alienation in Mortmain. And any that dig Coals, Chalk, Clay, Sand, Turf, &c. on the Lord's Waste contrary to Custom. Copyholder may dig for the same in his Copyhold of Inheritance. The Homage may also enquire of Surcharge of Common, with commonable

Lex Custu.
60.

Magna Chart. 36.
Lex Custu.
19.

Beasts, or of putting Beasts on to the Common that are not commonable; of Trespass in the Common, or Waste of the Lord, by digging, building or inclosure: Of Trespasses in Corn, Grass, Meadow, Pasture, Woods or Hedges: Of chasing Cattle into the Manor and rechasing them: Of Rescous or Pound Breach: Of removing Mere-stones or Landmarks: Of Bayliff, Constable, or Hayward neglecting his Office: Of By-Laws or Orders not observed; and to each Offence aforesaid add an Amerciament which must be affect'd.

Wood, 226.

A Copyholder must surrender his Copyhold to the Use of his last Will and Testament, before he can devise it by his Will. A Copyholder may surrender to the Use of his Will out of Court to the Lord himself; and also to the Steward of the Manor in any Place without Custom, but not to the Steward of the Court without Custom, nor into the Hands of the Lord by customary Tenants without Custom.

*1 Inst. 61.
Flora, l. 2.
c. 66.
14 Ed. I.*

*Lex custm.
18, 75.*

The Lord is an Instrument of Conveyance upon Surrenders, and a Conveyer himself upon voluntary Grants, and may admit in any Place where he pleaseth, which the Steward cannot do.

*Wood. 207.
1 Inst. 33.
Merton, 1.
20 H. III.
Lex custm.
67, 253.*

Dowers of Copyhold are warranted by special Custom only. The Statute of *Merton* extends to Copyhold, when the Wife is to be endowed of the Copyhold by the Custom, then she shall have all the Incidents to Dower;

Dower ; as to recover Damages for the Profits, from the Death of her Husband, by the Statute of *Merton*.

The illiterate Tenants of Manors frequently endeavour to conceal from the Lords the Lands they hold of their Manors freely or by Copy, and refuse to pay the ancient Rents, presuming the Lords are ignorant of the Premises, and know not where to distrain for their Rent, braving the Bayliff or Steward that make the just Demand ; *Let the Lord lay out my Land and I will pay the Rent.* But these Bravo's often are brought to better understanding by just Degrees in Equity. Lord Chancellor *Elsemere* said, *Such Tenants were worthy to return to their ancient villainous Tenure again.*

Lex custm.
230.

The Lord of a Manor may himself grant a Copyhold at any Place out of the Manor, but the Steward cannot grant a Copyhold at a Court held out of the Manor.

Reading
on Stat.
v. 2. p. 115.

A Copyholder may forfeit his Lands by special Custom when upon the Descent of any Copyhold of Inheritance the Heir faileth to come in to be admitted to his Copyhold, after three Proclamations made at three several Courts.

Wood. 220.

The Lord may distrain a Copyholder for his Rent as well as seize the old Copyhold Land.

Stiles. 387.

If a Copyholder refuses to pay a reasonable Fine or to be admitted to the Copyhold, this is a Forfeiture of his Estate.

The HISTORY of

Where a Man is seized of Lands which he holds by Service of Suit at the Lord's Court, that Service is Suit Service, for which Suit he may be judged in Court Baron.

Lex custm.
205.

A Copyholder forfeits his Copyhold, if he refuses to do Suit and Service, or to be sworn of the Homage or Jury, or being sworn, refuses to present according to his Oath. If he leaseth his Copyhold for one Year, and so from Year to Year during the Life of the Lessor, reserving one Day; for this is a Lease for two Years at least, and the reserving a Day in every Year is Fraud; but if he can lease his Copyhold for one Year by the Custom, he may covenant that the Lessee shall enjoy for ten Years; for this Covenant is not a Lease.

If the Lord receive Rent, or doe any thing whereby he acknowledges his forfeiting Copyholder for a Tenant after Forfeiture, such Acknowledgment amounteth to a Confirmation. Admission extinguishes Arrears of Rent, so as not to be recovered by the Laws of the Manor.

Wood. 277.

Surrender of Copyhold may be made by Attorney, or to another by Attorney; but the Lord may refuse to admit by Attorney him, to whose use a Surrender is made; because he may require the Person admitted to do Fealty.

Mirror,
169.

Though the Form of Homage and Fealty is now-a-days generally remitted, yet it being

ing a Duty, the Lord may insist on it if he please; I shall mention the Manner and Form of doing Homage and Fealty as anciently used.

When a Freeman doth Homage to his Lord for the Land he holds of him, he holds his Hands together between the Hands of his Lord and says thus. ^{17 Ed. 2.}

I, A-- B--, become your Man from this Day forth for Life, for Member, for worldly Honour, and shall owe you my Faith for the Lands I hold of you, saving the Faith I owe to our Sovereign Lord the King, and to mine other Lords. ^{S. Amand. 133.}

When a Freeman doth Fealty to his Lord, he lays his right Hand on the Book and says thus.

Hear you my Lord that I, A-- B--, shall be to you both true and faithful, and shall owe my Fidelity to you, for the Land I hold of you, and lawfully shall do and perform such Customs and Services as my Duty is to you at the Term assigned, so help me God and all his Saints. ^{17 Ed. 2. Mirror, 170. 1 Inst. 62.}

When a Villain (the Predecessor of our Copy-holders) did Fealty to his Lord he laid his Hand on the Book and said thus :

I A-- B--, from this time forth shall be true and faithful, and shall owe you Fealty for the Land I hold of you in Villenage, and shall be justified by you in Body and Goods; so help me God and all his Saints.

The HISTORY of

The principal Design of this Essay being to show the Antiquity of Court Baron and the ancient Customs of it, I shall shew the first Spring from whence Homage and Fealty arose.

The *Saxons* having conquer'd the *Britons* to preserve in Peace the Lands they had gained, set up the old *German Friburgh* or *Decenna*, as before mentioned: The Suretyship there entred, was the Band of Obedience required by the ancient *English Saxon* Kings, and so it continued as long as Lands were at the Will of the Lord, but after the Wars ceased between the *Saxons* and the *Danes*, the *Saxon* Kings and Lords required a promissory Oath of their Vassals to join with and assist them in repelling the *Danes*, if they shou'd attempt to break the Peace, which was not a direct feudal or predial Oath, that being first regularly introduced by *William the Conqueror*, who followed the Method and Manner of *Hugh Capet* in *France*.

But before I describe the *French* Manner, I shall give a short account of the promissory Oath of the *Saxon* Vassals to their Lords, which were of two Kinds, the one required, the other voluntary; the required Oath was as just before mentioned; the voluntary Oath was of such little Land-owners as lived near the *Danish* Quarters of *Norfolk* and *Northumberland*, who did not take themselves to be able to withstand the
Incurfions

Court Baron and Court Leet.

817

Incurfions of their *Danish* Neighbours, and therefore voluntarily apply'd to the great *Saxon* Lords of their Neighbourhood to take them into their Protection, and made a Promiffory Oath voluntarily to stand by and affift the Lords when they fhould be called thereto; and from fo putting themfelves under the Protection of a great Lord, they were termed *homines ejus commendati*. Thefe *Homines commendati* continued to *William the Conqueror's* time, mention being made of them in Domesday; and from hence the great Noblemen, fome of them till *Queen Elizabeth's* time, required an Oath of their *Famuli miniftrales*, their Houfhould Servants to be true and faithful to them.

In the old Book of Oaths is the Form Page 33. that *George Nevil* Lord *Abergaveny* used to fwear his Servants by, at their firft coming into his Houfhould, by his Steward.

You fhall bear your Faith therewith, and true Service, next to our Sovereign Lord King Henry VIII, unto my Lord and Lady of this Place, whom you intend now to ferve, alfo if you know any Hurt, Harm, or Hindrance to be done to my faid Lord or Lady, to their Bodies or to their Goods, or to his Children, by any Perfon or Perfons, you fhall give him Knowledge, or fome of his Counsel, &c.

Now I proceed to the Homage and Fealty introduced by *William the Conqueror* who feem'd

seemed to bring his Model with him from France, where *Hugh Capet* obtaining the Crown in the Year 987 by favour of the Nobility, to tie them more firmly to his Interest, instead of keeping it in his Power according to the Constitution of the Emperor *Conrade*, to admit into the Fee of the Father, which of the Sons he pleased; *Hugh* contracted with his Nobility, that their Fees should descend to their Heirs regularly upon condition of Homage and Oath of Fealty, and that he would maintain them in their Fees, as they supported him and his Heirs in the Monarchy.

Rel. Spel.
4. 5.

When new Grants were made, the Conditions were particularly expressed in the Grant, and every Heir after the Death of his Ancestor did Homage and Fealty to preserve in memory the original Contract, the Tenants Duty and the King's Promise, which was implied in the King's accepting the Forms prescribed in the first Grant.

Rel. Spel.
5. 35.

The Form of Homage and Fealty was necessary to preserve the memory of the Tenure and the Duty of the Tenant, for upon the Demise of the Ancestor, there was no occasion for a new Grant, the eldest Son claiming was admitted upon paying Relief for premier Seisin, with Homage and Fealty; as Feuds grew hereditary and new Heirs continually succeeding into them, the Tenants might by Degrees forget their
Duty,

Duty, and by substracting their Services, at last deny the original Contract upon which the Tenure itself was first founded, and so from conditional Succession grow into certain Succession, without the Form the Tenure required.

William the Conqueror, after he had conquered *Herald*, agreed and promised his Associates in Conquest, and the Nobility at *London*, to govern with Moderation, so all submitted to him and took the Oath of Allegiance. And at the Coronation at *Christmas* he took the same Oath the *Saxon* Kings did at their Coronations, the Substance whereof was his sacred Promise to maintain the Christian Faith with all his Power, to protect and defend the holy Church, to govern the People justly, according to the good old Laws of *England*, without having regard to the Person of any one; and that he would be obedient to suffer Right as well as the People should be.

Mirror. 3.

S. Taylor, 61.

The original or mutual Contract on the part of the King was the Coronation Oath, and on the part of the Subject, liege Homage as due to the King in respect of his Sovereignty; and feodal and predial Homage for Lands holden of him *in Capite*, he being *Caput Feodi* or *Terræ illius*.

Rel. Spol. 10.

The Barons and Tenants in *Capite* as the Convassals of the great Seignory plighted their Faith by Oath to the King, and he

he Protection to the whole People by his Oath.

The Barons and Tenants *in Capite* answer'd Tenure Duties to the King; and their Tenants did the same to them; but the Barons or Lords of Manors gave no Assurance by Oath to their Vassals, for observing the Laws and Customs of their Manors; The King gave greater Assurance to the Vassals of the great Seignory of the Nation, than the Lords did to the Vassals of their lesser Seignories. But Action of Trespafs lay against the Lord if he invaded the Rights of his Tenants.

S. Taylor,
61.

In the third Year of King *William, Edgar Atheling* out of *Scotland*, and the Earls *Edwin* and *Morchar* with their Men and Assistance from *Denmark*, gathered into a Body in the North, with intent to dethrone King *William*, but he defeated them; whereupon, says Mr. *Daniel*, most of the Lords came in upon publick Faith given them, and were conducted to *Berkhamsted*, who upon their Submission and Oath of Allegiance retaken, had their Pardon and Restitution to grace, granted by the King, believing it his nearest Concern to quiet them, that he again took his personal Oath, before the Archbishop *Lanfranck* and the Lords, to observe the ancient Laws established by his noble Predecessors the Kings of *England*; and especially those of *Edward the Confessor*.

But

But still the Lords were under no Oath to their Vassals, but were a sort of petty Kings in their several Districts, and made Laws to be observed and obeyed there; as for instance, *William Fitz Osborn* being Lord of *Bretevil* in *Normandy*, introduced the Laws and Customs of *Bretevil* into his *English* Earldom of *Hereford*, which Laws continued in use there till King *Stephen's* time. Jan. Ang. 93.

And the lesser Lords of Manors made Laws in their Courts Baron to be observed within the Circuits of their Manors, which were termed By-laws, or the Customs of the Manor, when they had been of long Continuance.

But though the Lords gave no promissory Oath to their Vassals, yet they could make no By-laws in their Courts without the Consent and Approbation of their Vassals, Suiters of Court. The Barons were Counsellors to the King in the great Court of the Nation, and the Freeholders Counsellors to the Lord of the Manor in his Court Baron.

As the King and his Nobles made Laws in the Council of the great Seignory of the Nation, so did the Lords of Manors make Laws in their little Seignories, with the Advice and Consent of their Suiters of Court, their Freemen: Those Manor-Laws, Laws made in Court Baron, for the Use and Governance of the Tenants and Resients within the Limits of the Manor, were called By-Laws,

Lex custm.
40.

Laws, as the Ancestors of our *English Saxons*, the *Goths* and *Vandals*, called the local Laws of their small Districts, *Bilagines*, of late called Customs of the Manor; Custom is appropriated to Place, Prescription to a Person; Prescription to one, Custom to many.

Lex custm.
319.

Alterations of the Customs of a Manor by Consent of Lord and Tenants are good, and have been allowed to be so in *Chancery*.

COMMON PASTURE.

The Rights of Lords of Manors to Wastes and Common-Pasture and the Privileges of the Tenants of the Manor there, is a Part of the History of Court Baron not to be passed by.

In this Essay I have traced the several Particulars as far up into Antiquity, as Manuscripts and published Accounts (within my reach) give me any Light into the Rights and Usages of Lords and Tenants.

I shall begin with the *Saxon* Conquest, for to go any higher into Antiquity upon this Article, is both obscure and useless; for all the Rights we enjoy from Custom, Prescription, Usage or Common Law, we derive and trace from the *Saxons*.

The *Saxons* that by Invitation came over out of *Germany* to assist the *Britons* against the Inroads, Burnings and Devastations of the *Scots* and *Picts*, treacherously set up for themselves, and being grown fat at the Tables
of

of their Masters the *Britons*, grew insolent and saucy, wou'd not be content with the Plenty they enjoyed, without being their own Carvers and Masters of the Land and all that was therein.

The *Britons* defended as well as they could, and had many Battles with their perfidious Guests, their invited Auxiliaries, but after a long War, with many up's and down's, and strenuous Struggles, the *Britons* were reduced to such Extremities, that the noble *Britons* fled into *Wales* and the mountainous Parts of *Cornwal*, to save themselves from the conquering Sword of the *Saxons*, who became Masters of all the fertile cultivated Parts of the Land, and made the poor miserable *Britons* that staid amongst them their perfect Slaves.

The *Saxon* Conquerors being a confederated People, joint Undertakers, who fought for what they could get, all having a share in conquering the *Britons*, were by Agreement to divide the Spoil, every Leader had an agreed Portion of the conquer'd *Britons* Lands, out of which Allotment he was to provide for his Followers, *i. e.* Soldiers, who were not then paid *cum Solidis*, from whence come the Term *Soldier*, but every Man that served in the Wars against the *Britons*, was to be maintained out of the conquered Lands, assigned by Agreement to every Leader for the maintenance of him and
and

and his Followers, they having no Money to pay their Assistants.

The Captain or Commander of a Company had a certain Proportion of Land set out to him for himself and his Men, under no other condition but to maintain those that had served in the Wars under his Command; and this Captain being accountable to no Superior for the Land allotted to him, had in his District *Directum Dominium* in his Land holding them of no superior, which was the *Alodium* of the *English Saxons*, his Land being subject to no other Duty, than what the common Bond of Union and Interest oblig'd them to, which in *Latin* is termed *trinodis necessitas*, viz. Expedition against Enemies building and repairing of Castles, Forts and Bridges, for the Maintenance and Defence of their Conquests.

The Captains who were absolute Lords and Proprietors of the Lands assigned to them, to save themselves the Trouble of maintaining their Followers, in the Wars, assigned to each one of them a reasonable Portion out of their Allotment, reserving to themselves a sufficient Quantity for Maintenance of their Families, and this was the Captain's Demains, in which he employed Servants and Husbandmen to cultivate and bring the Product to his Mansion-house for Hospitality, &c.

When

When the Captain had parcelled out sufficient Parcels of Land for the Maintenance of his Followers, and cultivated enough for his own Hospitality and Maintenance of his Husbandmen and Servants, there being generally a Surplus, they having no foreign Market to vend the Product of their Lands at, and so many of the *Britons* fled, that there were not People enough to consume the Product of all the Land, therefore great Part was left uncultivated and neglected, and common to all the Inhabitants of the Captain's Village or Street, but being assigned or granted to no body, still remain'd the Captain's Property, though waste and used in common by the Inhabitants.

From hence came our modern common Pasture, which was originally the Lord's indefeisable Right, but in tract of time, by the Lord's Allowance, Negligence or Favour to his Neighbours obtained the Name of Common.

Common is properly the Right or Interest which the People have obtain'd by ^{Manwood,} Usage and Custom to feed their Beasts or Cattle in another Man's Soil or Land, and called Common from *Communitate*, viz. from the Community or Number of People who use Common of Pasture there, or from the Number of Beasts that participate of the Herbage there; for where People have

The HISTORY of

Common of Pasture for their Cattle, many Mens Cattle do usually depasture there; and therefore *Budæus* calls such Common, *Com-pascuum*, viz. a Place where several Mens Beasts feed in Community.

The Successors of the *Saxon* Captains or original Conquerors and Sharers of the *Britons* Lands were afterward called *Thegnes* or *Thanes*, and were the Predecessors of our Lords of Manors, so whilst I continue in the *Saxon* History I shall make use of the Term *Thane* for the Chief of a small District, Village, Soke or Seignory.

The *Saxon Thanes* allowed their Friends and Followers in the Wars, who were the Predecessors of our modern Freeholders, and to their Villains or Husbandmen that had obtain'd a customary Right in Land, who were the Predecessors of our modern Copyholders, to take Common of Pasture, Turbary, Estovers of House-bote, Hay-bote, Fire-bote, and Plow-bote, in their unimproved Lands, which was at first no more than a Connivance or Permission of the *Thane* who had the sole Property in all the Lands of his District, that he had not granted to Freeholders, Villains or Husbandmen. This Usage of the Farmers in tract of time, became a customary Right, which the Farmers claim'd and the *Thanes* allowed.

As People increased, a greater Quantity of Land was wanted for their Maintenance,
and

and they petitioned the *Thanes* to grant them Part of their Wastes to be approved and put into Severalty; the *Thane* in such new Farm met with no Obstruction from his ancient Farmers, there being no Law to prohibit the *Thanes* from granting Part of their Wastes in Severalty, which they did with such Moderation, that they rarely fail'd of having the Consent of their Freemen, which was generally had at the *Hall-mote*, and the Terms enter'd in the *Thanes* Book, *viz.* the Rents and Services reserved to the Lord.

Thus stood the Usage of Common between *Thane* and Freeholder in *Edward the Confessor's* time. The Farmer had gain'd Right to Commonage upon the *Thane's* Waste by Custom, and the Property of the Soil still in the *Thane*, with a Right of Approvement of Part, either to Farmers under Rents and Services, or to his own Use, to be cultivated by his Servants.

My next Step is to *William* of *Normandy*, who with his *Norman* Assistants conquer'd *Harold*, and divided his Lands and the Lands of his Adherents amongst themselves. The King took to himself King *Edward's* Lands, and some of the great Honours of *Harold* that had several Manors dependant on them, and the rest he granted to his *Norman* Assistants. To the *Norman* Barons he granted the Manors of the *English*

The HISTORY of

Thanes, whose Name and Moderation was soon lost, the *Saxon Thanes* Land and Power fell into the Hands of the *Norman* Barons, who were not so indulgent to their Tenants as were the *Saxon Thanes*.

Great numbers of *Normans* coming over, and few of the *English* fleeing from their Country, and in *William's* time foreign Markets opening, the Product of Land was in demand abroad, and at home for the Maintenance of the increased People.

The *Normans* finding Improvement of their Estates wou'd turn to good account, the Barons approved common Pastures in a more extended Manor than the *Saxon Thanes* had done before them; they soon grew acquainted with the *English* Laws, which King *William* having confirmed, and they had some small regard to, but far from the Moderation of the *Saxon Thanes*; the *Norman* Lords knowing the *Saxon* Laws allowed of approving Commons, set about that work so immoderately, that great Contests arose between Lords of Manors and their Tenants, many Suits in the Courts of the County, and frequent Appeals from thence to the King's Courts, by Writ of false Judgment.

The Rights of the Lords of Manors and their Tenants to common Pasture and the Appurtenances from *William* I, to *Henry* III, were so uncertainly determined in the Courts
of

of Judicature, that it became necessary for the Legislature to interpose and settle the Rights between Lords and Tenants.

Therefore the Statute of *Merton* was made ^{20 H. III.} to settle the Rights between Lords and Tenants, wherein is enacted, That Lords of Wastes, commonable Woods or Pastures, may approve against their Tenants Part thereof; so that they leave sufficient Common for their Tenants with convenient Ways and Passages to have free Ingress, Egress and Regress, for their Cattle and Carriages. ^{c. 4. 2 Inst. 86.}

What is the sufficient Common within the Meaning and Intent of the Statute must be gather'd from the Sages of the Law, especially such as flourished in or near that time, as *Glanvill*, *Braeton*, *Britton*, *Fleta*, the *Mirror*, *Fitz Herbert's Natura Brevium*, which latter, though of *Henry VIII's* time, is very learned in the ancient Laws of *England*, and many more too numerous to be mentioned in my intended Brevity.

But before I enquire what is sufficient Common, it is proper to distinguish the Nature and Property of the several Kinds of Common, and whether they consist of Herbage, or of Wood and Herbage together, or of Piscary; all come under four general Denominations.

First then, of Common Appendant, which ^{1 Inst. 122.} is of Common Right, therefore a Man need

A a 3

not

Inst. Wood. not prescribe to it, for Beasts that are Com-
 336. monable, as Beasts of the Plow and Car-
Manwood, riage, Kine and Sheep to maintain the Fa-
 85, 89. mily and composter the Land, no special
Keeble, v. 3. Pleading necessary, 'tis sufficient to say
 66. that it is appendant to ancient arable Land,
 as has been so time out of mind; tho' not
 plowed, if plowable it's esteemed to be an-
 ciently plowed.

II. *Secondly*, Common Appurtenant, that is
Roll. Abr. for Creatures that are not of a commonable
 399. Nature, as Swine, Goats, Geese and the
1 Inst. 122. like. The Tenant must prescribe to this
Readings sort of Common; Prescription supplies the
on Stat. Loss of the Grant.
vol. 2. 80.

III. *Thirdly*, Common by cause of Vicinage
Keeble, v. 2. which differeth from both the other Com-
 24. mons, for no Man can put his Beasts there-
 on, but if they escape thither by reason of
 Vicinity, 'tis an involuntary Trespass,
 which the Law excuses, to prevent Suits
 in open Countries; This Common is a sort
 of Common Appendant, and is where the
 Tenants of two Lords (which are seized of
 two Towns lying next to one another) have
 used time out of mind to have Common
 promiscuously and proportionably to their
 Extent of Common on both Sides for all
1 Inst. 122. manner of Beasts commonable. This sort of
 Common being but an Excuse for Trespass,
 one Town or Manor may inclose against
 the other,

Fourthly,

Fourthly, Common in gros is so called IV. for that it appertaineth to no Land, has not the Limitations that attend Common ¹ *Inst.* 122. appendant, appurtenant or vicinage, not ² *Inst.* 86. limited to arable Land, a House and Vicinage, and therefore the Right thereto must appear *Manwood*, by Grant or Prescription, and if the Grant be ^{94.} *sans* Number in gros, yet the Tenants of the Manor shall common with the Commoner in gros by Grant. But the Lord cannot approve against a Common in gros by the Statute of *Merton*, the Words of the Act being, that *they shall have as much Pasture as sufficient to their Tenements.* ^{*Wood.* 338. *Reading on Stat.* v. 1. p. 100. *vo.* 2. p. 80.}

Now I have described the several Sorts of Common, I return to enquire what number of Cattle the Tenant that hath Common appendant, may feed upon the Lord's Waste, which is to be the Rule to the Lord's Right of Approvement, pursuant to the Statute of *Merton*, wherein it is said the Lord may inclose, if he leaves sufficient Common for his Tenants, that is for their Cattle *levant and couchant.* ^{*Modern Rep.* vol. 3. 162, 246.}

Common appendant being the Right of Common, particularly aimed at in the Statute of *Merton*, I shall show the first Spring ² *Inst.* 86. of Right the Tenants of a Manor had and have to Common appendant, and the Limitations the Tenants are confined to by Law. As said before, the Wastes and unimproved Lands are *prima facie* the Lord's, ^{*Glawill.* *Braffton.*}

Britton.

Flota.

Mirror.

and when he granted Part thereof to a Tenant to be improved to Tillage, he either granted or allowed his Tenant or Feoffee, to pasture his Beasts of the Plow and Carriage, and other Cattle to compost his arable Tenancy upon the remaining Part of the Waste, which was the Common appendant to the Tenancy, and the Original of the Tenant's Right to Common appendant.

The Inducement to the Lords to allow Common of Pasture in their Wastes to their Tenants, was for the better Improvement of their arable Tenancies, from whence the Lords received a Benefit, the Lord receiving his reserved Rent in Corn and Cattle, *Pecus* the ancient *Pecunia*, being the ancient specific Rent, and when Money began to grow into use, some Part of the Rent was paid in Money, and another Part in Corn and Cattle; the first was called *White Rent*, and the latter *Black Maile*.

Besides Horses and Oxen for plowing and carrying, the Tenant was allowed to common Sheep for the teathing his arable Land, and Cows for the Maintenance of his Family, and to eat the Stover to make Compost to improve the arable Land.

Brafton.

Manwood.
§7, 94, 96.

From hence may be gather'd that the Tenant's Right to Common appendant was not *sans* Number, but limited both as to Number and the Kind of Cattle that are necessary to cultivate and improve the arable
his

ble Tenancy, which if he exceeded, the Writ of Admeasurement of Pasture laid against him; but of late the general Prosecution hath been by Action on the Case.

By common Law the Lord might approve Part of his Waste against any that had Common appendant, and the Statute of *Merton* does not take away his Right, but sets Limits to it, that the Lords may be kept within reasonable Improvements. The Lord's Approvement being legal both at common Law, and that Privilege confirmed to him also by Statute, there remains nothing but to explain the Limitation in the Statute, *viz.* that he shall leave Pasture enough for the Cattle of his Tenants, and the Law hath limited them both as to Quantity and Quality.

The Quantity is so many as are convenient for his arable Land, the Maintenance of his Family, and to compost his arable Tenancy, and no more than he or they have *levant or couchant* thereon; the Residue the Lord may approve.

The Quality are commonable Cattle necessary to an arable Tenancy as before mentioned, Horses, Oxen, Sheep and Cows, and the Tenant hath no further Right to Common appendant, than a sufficient Number for his Tenancy, and the Law will determine how many are a sufficient Number.

If a Tenant surcharge the Common, *i. e.* put on more Beasts than his Tenancy requires,

Maxims,
208.

Ventris, 54.

Lex Custu.
279.

Wood, 339.

Read. on
Stat. vol. 1.
p. 100.

quires, the Lord may distrain or bring his Action, and so may any other Tenant of the Manor, either jointly with the Lord, or singly by himself.

Cowel, voce
Damage
feasant.

A Commoner may distrain a Stranger's Beasts for *Damage feasant* on the Common where he has a Right, and carry them to the Lords Pound, which Distress may be taken in the Night as well as in the Day, which is peculiar to distress *Damage feasant*.

Wood, 341.
Lutwich,
394.

There is a vulgar Opinion pretty generally receiv'd, that the Lord of a Manor seized of Waste, wherein the Tenants have a Right to Common appendant, may not depasture there, with his Tenants of common or original Right, which is a vulgar Error; for a Prescription to exclude the Lord from pasturing on the Common of his Manor, has no Foundation in Law; the Lord's Right is implied in the first Grant, and that he don't in his Grant exclude himself. If the Lord grant common *sans* Number, yet there must be left sufficient Common of Pasture for the Lord's own Beasts; the original Right being in him.

Wood, 339.
Ventris,
394.

Read. on
Stat. vo. 1.
p. 100.
vol. 2, p. 81.

Manwood,
95.

The Statute of *Merton* being found deficient, it extending no further than to the Rights of the Lord and the Tenants of his Manor, so that the Lord was not empower'd by that Statute to inclose against a Neighbour that was an Inter-commoner with

2 Inst. 473,
476.

with his
whereof
for the
the Lor
that is

West
rute of
the Lo
purfua
Fence
Lord
upon
be m
at all

Bu
effect

App
Perf

as t
Perf

the
sha

at
sha

Ar
O

L
th

f
I

with him in his Common; for Remedy whereof was made the Statute of *Westminster* the second *cap.* 46. which impowers the Lord to inclose against his Neighbour that is Intercommoner with him. ^{13 Ed. I.}

Westminster the second enlarged the Statute of *Merton* to the great Advantage of the Lords, for if an Approvement was made pursuant to the Statute of *Merton*, and the Fence thrown down by Persons known, the Lord had no other Remedy than by Action upon the Case, and if the Person could not be made out, then he had no Remedy at all.

But the Statute of *Westminster* gave an effectual Remedy, for if the Fence of the Approvement be thrown down by unknown Persons, in the Night or clandestinely, so as the adjoining Town cannot indict the Persons guilty of the Offence, in such case the adjoining Towns to the Approvement shall be distrained to make good the Fence, at their own proper Cost and Charges, and shall also yield Damages to the Approver. And if the Town adjoining don't indict the Offenders within a Year and a Day, the Lord aggrieved may have Remedy against the said Town by Action.

The Statutes of *Merton* and *Westminster* the second were look'd upon to be so just, that in *Edward VI's* time they were confirmed, ^{3 Ed. VI. 9.} and further added, that upon Judgment ^{43 Eliz. 11.} given

given for the Plaintiff in an Affize, upon any Branch of the said Statutes of *Merton* and *Westminster* the second, the Court shall award treble Damages, whereas for Offences committed against the Statute of *Merton* and *Westminster*, only common Damages were assessed.

Maxims of
Equity, 34.

Vern. 32.

A Common that hath been inclosed for thirty Years, shall not afterwards be thrown open; after such Years elapsed Inquiry is not to be made after the Right of inclosing. Commoner must not cut Bushes or Furrs upon the Common without Custom for so doing.

1 Geo. I.
fol. 655.

For the better preserving Plantations of Timber-trees, Fruit-trees, and Hedge-rows, a Statute was made in the first of King *George I*, wherein 'tis enacted, That the Village wherein such Plantations and Hedges are thrown down, shall answer Costs and Damages for such Trees or Hedges thrown down or destroyed by unknown Persons, as is directed in the Statute of *Westminster* the second.

If the Persons are known that are guilty of throwing down Hedges or destroying Trees and Plantations, two Justices of Peace, upon Conviction of the Offender or Offenders, shall commit him or them to the House of Correction, there to remain for the space of three Months without Bail or Mainprise, and be kept to hard Labour, and

publicly whipt by the Master of the House once every Month during the time of his Continuance there, in the open Market-place of the Town wherein the House of Correction stands, and on the Market-day, between the Hours of eleven and two.

Before any such Offender or Offenders be discharged, they must find sufficient Sureties for their good Behaviour for the Space of two Years from thence next ensuing.

This Act is an Affirmance of the Statute of *Westminster* the Second, and so is the Statute of the sixth of King *George*; and also confirms and enlarges the Statute made in the first Year of his Reign, in the following manner:

Whereas some Doubts have arisen whether 6 George, fol. 339.
the Offences mentioned in the first of King
George I, and committed in the Day-time,
are punishable by the said Act, and whereas
there is no Provision made in the said Act
for punishing the Offences committed by Per-
sons who shall break open, throw down, level
or destroy the Hedges, Gates, Posts, Stiles,
Railing, Fences, Ditches, Banks, Walls or
other Inclosures of Improvements;

Therefore it is enacted, that if any Per-
son or Persons by Day or by Night break
open, throw down, level or destroy any Hedges,
Gates, Posts, Stiles, Railing, Walls, Fences,
Dikes,

*The HISTORY of
Dikes, Ditches, Banks, or other Inclosures,
Quicksets, &c.*

The Lords of Manors or other Owners of the same shall be repaired in Damages according to the Statute of *Westminster* the second; unless the Party or Parties offending shall be convict of such Offence, by the adjoining Parish or Parishes within six Months of the Offence committed.

Two Justices of Peace, or the Justices in open Sessions, upon Complaint made by any Inhabitant of the Parish, or by the Owner of the Trees or Fences broke down or destroyed, may cause such Offenders to be apprehended, and upon Conviction shall inflict the Punishments directed by the first of King *George I.*

In case an Action be brought for any thing done pursuant to this Act or the aforesaid Acts, the Defendant may plead the general Issue, and if a Verdict pass for the Defendant, or the Plaintiff be non-suit, or discontinue his Action, the Defendant shall recover treble Costs.

Drift of Common Pasture.

The Lord of a Manor hath an original Right to drive the Cattle of his Common Pasture to the Pound of the Manor, or to some other inclosed Place within the Manor, where

where the Lord or his Bailiff may demand Damages for Trespass upon his Common, of all such as have no Right of Commonage in the Lord's Waste: And if the Trespasser refuses to pay reasonable Damage, the Cattle may stand in the Pound *overt* and starve; if the Cattle be impounded in any Inclosure that is not Pound *overt*, the Lord or his Bayliff ought to give notice to the Owner, if he can be known, that he may feed his Cattle till he agree upon the Price of Redemption.

If the Owner of the Cattle is not known, *Wood. 328.* the Lord's Bayliff after twenty four Hours standing in the Pound, must put them to Pasture, after marking them as Strays, and cause them to be proclaimed at two or three adjacent Market-towns on the Market-days, in the open Market, which Proclamation the Clerk of the Market must register with the particular Description of the Cattle, to which Book all Persons may have recourse paying the accustomed Fee.

The Lord's Drift of his Commons, as before said, is an original Right that the Lord shan't need to prescribe to, and it is incumbent upon him to join with and assist his Tenants that have a Right of Common appendant, to see whether the Common be not misused.

First, to see whether those that have a *4 Inst. 309.* Right to Common appendant, appurtenant, in

The HISTORY of

in gross, or by reason of Vicinage, exceed the Rights they have by Grant or Custom, or not.

Secondly, to see whether those that have a Right to Commonage, do common with such Cattle only, as by Grant or Custom they may.

Thirdly, to see whether such as have a Right of Commonage and put on only commonable Cattle as by Grant or Custom they may, don't surcharge the Common.

Fourthly, to see whether the Cattle of Strangers be there that have no Right of Commonage on the Common of the Manor.

The Lord's impounding and detaining Cattle for the Trespasses aforesaid, being for the Preservation of the Tenant's Rights as well as the Lord's, if the Cattle be replevin'd, and an Action ensue, in that case the Tenants are all in some measure interested, and ought to stand by the Lord and bear a Share in the Charge of Suit. But if the Tenants refuse to bear any Share of the Charges, the Lord will, upon right Reason, deliver Cattle impounded for false Commonage, and leave the Tenants to preserve their own Rights, for if the Lords do not drive the Common the Tenants may, and if they impound the Cattle of wrong Commoners, they must enter an Action with the Lord's Pinfolder; and then they must answer the Suit, if a Replevin be brought. By

By the Statute of *Henry VIII*, Com-^{32 H. VIII.}
mons are to be driven yearly, and if the^{13.}
Lord neglects so to do 'till *Michaelmas*,^{8 Eliz. 8.}
the Constable of the Town, and Inhabi-
tants are to drive the Common within fif-
teen Days after *Michaelmas* upon pain of
forty Shillings to be forfeited to the King
by the Lord, his Bayliff or Constables, if
they neglect to drive the Commons of their
Towns.

If upon the Drift there be found on the
Commons, any Mare, Filly-foal, or Foal
or Gelding, that then shall be thought not
able to bear Foals of reasonable Stature,
or not able, or like to grow to be able to
do profitable Labours, by the Discretion of
the Drivers aforesaid, or the more Num-
ber of them; that then the same Driver
or Drivers shall cause the same unpro-
fitable, unlikely Tits to be killed, and
their Bodies buried or otherwise disposed
of without Annoyance to the Neighbour-
hood.

No Person shall put to Pasture on com-
mon Grounds, any Horse, Gelding or Mare
infected with Scab or Maunge upon pain
of forfeiting ten Shillings for each scabby
or maungy Beast, which Offence shall be
inquired into, and presented before the Lord
of the Leet or his Steward, and the For-

VOL. II.

B b

feiture

feiture therefore to be to the Lord of the Lect.

The Statute also for Improvement of the Breed of Horses, provides that no Stoned Horses above the Age of two Years under fifteen Hands high, to be measured from the lowest Part of the Hoof of the Fore-foot, unto the highest Part of the Wither, every Handful to contain four Inches, shall be suffer'd to pasture upon any Common Grounds, upon pain of forfeiting the said Horses that are under the said Standard.

It is lawful for any Person that shall find any Stoned Horse above two Years old, and not fifteen Hands high, to seize the said Horse in Manner and Form following: That is to say, the Person finding such undersized Horse upon common Ground, shall go to the Bailiff of the Manor, or to the Constable of the Town, and require them, or one of them, in the King's Behalf, to go with him to bring such Horse to the Pound, to be there measured by the said Bailiff or Constable in the presence of three other honest Men, to be named and appointed by the said Officer; and if it be found that the Horse or Horses be not Standard, according to the said Act, that then it shall be lawful to
the

Court Baron and Court Leet.

643

the Person that seized the Horſe or Horſes to take and retain the ſame to his own uſe, as his own proper Goods and Chattels for ever, without Let, Interruption, Vexation, Suit or Trouble of the Owner of them.

If the ſaid Bailiff, Conſtable, or three honeſt Men required to be preſent at meaſuring the ſaid Horſe or Horſes, do reſuſe ſo to do, or elſe do not truly meaſure ſuch Horſe or Horſes, then the Bailiff, Conſtable and the ſaid three honeſt Men, neglecting or reſuſing to do their Duty in the Premises, ſhall forfeit forty Shillings for every Neglect or Reſuſal, one Half to the King, the other Half to the Proſecutor that ſues for the ſame.

Stewards of Court Leet ſhall inquire of Neglect of driving Common, and Preſentments there found ſhall be certified to the next general Quarter Seſſions of the Peace, where the Juſtices have Power to determine upon ſuch Preſentments, and to hear and determine Preſentments made before themſelves in Seſſions: And if the Steward of a Leet embezzle or conceal Preſentments made, or do not certify them to the Seſſions, he ſhall forfeit forty Shillings, one Half to the King, the other Half to the Proſecutor that will ſue for the ſame before

32 H. VIII.
13.

B b 2

fore

fore the Justices at Sessions, by Bill or Information.

This Act extends not to a Stoned Horse that once in a Year escapes out of a several Pasture against the Will and Mind of the Owner ; so that the said Horse so breaking out, remains not four Days after Notice given at the Dwelling-house of the Owner, or after Publication thereof made on a *Sunday* or Festival in the Parish Church where the Owner dwells.

Neither doth this Act extend to Commons where Mares or Fillies are not suffer'd to be pastur'd or kept, as to that Part of it, that relates to Stoned Horses under the Standard.

As said before, the Lord of a Manor hath an Original Right to drive his Common, and at any time of the Year, and as often as he pleases, says this Statute, which is declaratory and in Affirmance of the Right the Lord before had at common Law.

8 *Eliz.* 8.

That Part of this Statute which relates to the Stature of Horses, don't extend to the Fen Grounds in the Isle of *Ely*, or of the Counties of *Cambridge*, *Huntington*, *Northampton*, *Lincoln*, *Norfolk* or *Suffolk*, so that the Horses there kept in common Fens are not under thirteen Hands high, by the Statute of *Elizabeth*, and by a Statute of King

31 *Jac.* I.
28.

James

Court Baron and Court Leet.

445

James shall not extend into *Cornwall*. But this Exemption don't extend to firm common Pastures in the said Counties, but only to sedgy, rotten Marshes and Fens that won't bear Horses of large Stature; and there if the Stoned Horses be thirteen Hands high it is sufficient.



B b 3

INDEX.

I N D E X

To the HISTORY of

Court Baron and Court Leet.

- A.
- A** *Bergavenny*, 617.
Admeasurement, 633.
Ælfric, 549.
Affer, 607.
Agnebine, 558.
Alderman, 554, 561.
Ales, 543.
Alfred, 543, 553, 556, 559.
Alienation, 611.
Allegiance, 619, 620.
Alodium, 550, 572, 624.
Ambacti, 531.
Amerciament, 607.
Appendant, 630 -- 638.
Approve, 626 -- 638.
Appurtenant, 630 -- 638.
Arable, 628 -- 638.
Aristocracy, 549.
Arundel 576.
Assistants, 563.
Atbelstan, 600.
Averland, 578.
- B:
- B** *Abel*, 526.
Bailliff, 612, 642.
- Baldred*, 548.
Bardolf, 544.
Bargain, 576.
Baron, 562, 620, 621.
Bastard, 570.
Beaupleader, 591.
Bede, 555.
Beer, 580.
Belesme, 576.
Berghamsted, 105.
Berland, 579.
Bigod, 562.
Billockby, 571.
Bishops, 559.
Black-maile, 165, 632.
Bocland, 549.
Bondman, 593, 595.
Bordarii, 592.
Bordmanni, 593.
Bordland, 579.
Borough, 567.
Bote, 626.
Bracton, 556, 569, 571.
Brancafter, 581.
Bretevil, 621.
Bricktrick, 549.
Bride, 583, 584, 585.
- B b 4 *Briton*

I N D E X.

Britons, 533, 570, 581,
594.
Building, 612.
Burgage, 566.
By-Law, 606, 607, 608,
612, 621.

C.

Cæsar, 569.
Canute, 544, 557, 593.
Capet, 616, 618.
Captain, 538, 624, 627.
Centenary, 554.
Chancellor, 608.
Charters, 563, 590.
Chasing, 612.
Chief Pledge, 555, 557.
Chirographum, 588.
Classical Order of Tenants,
579.
Clerk of the Market, 639.
Clients, 531.
Clipsby, 571.
Common, 612, 622--644.
Commendati, 617.
Common Pleas, 590.
Comites, 531.
Comortba, 542.
Confirmation, 614.
Constable, 612, 643.
Contenementum, 608.
Convassal, 548, 587.
Contract, 552, 587, 618,
619.
Canrade, 619.
Convention, 576.
Conveyance, 589, 590.
Copyholder, 564, 573,
575, 596, 612, 614, 626.

Cornwall, 623, 645.
Coronation, 619.
Coroner, 603.
Coshering, 551.
Cotland, 578.
Cottage, 578.
Couchant, 633.
Council, 528.
Court Baron, 562, 564,
565, 573, 590, 606, 609,
621.
Court of County, 590.
Court Customary, 564,
610.
Cow, 600.
Criminals, 559.
Cross, 587.
Crying, 599, 600, 639.
Cuckingitool, 561.
Custom, 569, 575, 607,
611, 621, 622.

D.

D *Amage feasant*, 634.
Danes, 553, 616, 620.
Death, 610.
Debt, 609.
Decennary, 554, 564, 616.
Deeds, 589, 590.
Demeans, 539, 572.
Deodand, 604.
Descent, 566, 569, 570,
618.
Digging, 611.
Diploma, 588.
Distress, 609, 613, 634.
Dividing, 566.
Domesday, 549.
Dominium, 624.

Dower,

I N D E X.

Dower, 612.
 Drift, 638, --- 645.
Druides, 534.
 Duke, 12.
Dunland, 581.

E.

E *Adric*, 557.
 Earl, 559.
Edgar, 547, 554, 556, 558,
 589, 620.
Edward, 554, 556, 557,
 558, 559, 563, 564, 566,
 570, 571, 585, 590, 601,
 602, 620.
Edwin, 555, 620,
Egbert, 548, 554.
 Enclosing, 612.
 Encroachment, 610.
 Error, 609.
 Escheat, 572, 605, 610.
 Estovers, 626.
 Estray, 599.
Esbeling, 570.
Esbelred, 593.
Esbelwolf, 548.
Evenus, 583, 584.
 Execution, 609.

F.

F *Alse Judgement*, 609.
 Farmers, 568.
 Fealty, 615, 616, 617,
 618.
 Fee, 531.
 Felony, 557.
 Fine, 574, 576, 590, 613.

Fishing, 611.
Flemensfirm, 603.
Folcmor, 554.
Folcland, 549.
 Fools, 586.
 Forefall, 603.
 Forfeiture, 610, 613.
Forland, 579.
 Fornication, 583.
Fossa, 561, 585.
Fosterland, 582.
 Forty Shillings, 609.
 Franchise, 540, 545, 563.
 Frankpledge, 542, 564.
 Freedom, 595.
 Freehold, 565.
 Freemen, 540, 542, 627.
Friburgh, 554-559, 564,
 616.
Furca, 561, 585.
Fyrderinga, 602.

G.

Gaffelland, 577, 580.
Gamortba, 542.
Gavell, 571, 572.
Gauls, 594.
Gemote, 542.
Germans, 594.
Gersuma, 576.
Glawvil, 568.
Goths, 531.
 Government, 532.
 Gross, 631.
 Grants, 547, 548, 563, 587,
 588, 618.
 Guest, 557, 558.
Guthron, 553.

H. Hal-

I N D E X.

H.

HAlmot, 541, 542, 547,
 552, 558, 552, 557.
Hamfocna, 603.
Handborough, 555, 556.
Harold, 561, 619, 627.
Hawanman, 558.
 Hawking, 611.
 Hayward, 95.
 Headborough, 555, 556.
Healle, 546.
 Heir, 570.
Hengist, 536.
Henry, 602.
 Heptarchy, 538.
 Hereditary, 569, 618.
Hereford, 621.
His testibus, 589.
Hlaford, 543.
Hlothar, 555, 557.
Heriot, 549, 605.
 Homage, 544, 607, 610,
 611, 614, 615, 616, 617,
 618, 619.
 Honey, 580.
 Horse-average, 579.
 Horse-pole, 583.
 Horses, 641 -- 644.
Howel Dha, 535, 570.
Homebine, 558.
Hospes, 557.
 Hospitality, 546.
 Host, 557, 558.
 Hundred, 554, 557.
Huns, 531.
 Hunting, 611.
 Husbandry, 568.
 Husbandmen, 530, 540, 626.
Husting, 546.
Hugh Capet, 616, 618.

I.

Jesters, 586.
Ina, 567, 569.
 In-average, 578.
 Indenture, 588.
Ingsangthefe, 560.
Ingulphus, 588.
 Inland, 539, 565, 592.
 Intercommoner, 634.
 Intestate, 549.
 Jocular Tenures, 586.
John, King, 589.
Judiciarius Liber, 568.
 Judgment false, 609, 628.
 Jurisdiction, 529, 553, 559,
 564.
 Jury, 91, 607, 608.

K.

KEnt, 571.
 Kin, 571.
 King, 620.
 Knight, 549, 565.

L.

LAndlord, 530.
 Lath, 554, 560, 564.
Brehon, 570.
British, 570.
 Common, 622,
 Nations, 527.
 Nature, 527.
 Property, 527, 534, 563.
 Provincial, 528, 530.
 Lazzi,

I N D E X.

Lazzi, 592.
Leafe, 614.
Leet, 560, 561, 562, 564.
Legales Homines, 540.
Letæ, de certo, 561.
Levant, 633.
Levari facias, 609.
Libellus, 588.
Litera, 588.
Livery, 575.
Lord, 549.
Lords right, 620, 634.

M.

M*Abillon*, 589.
Magna Charta, 563.
Maile, 565, 632.
Malcomb, 584.
Manor, 562, 563, 627.
Manslaughter, 557.
Manumile, 594, 596.
Manupast, 556.
Marcheta, 581, 582, 583,
 584.
Market, 625, 628.
Marriage 585.
Maungy Beasts, 641.
Memory, 607.
Merestone, 612.
Merton, 629, 633.
Mill, 611.
Misericordia, 608.
Molland, 581.
Monarch, 525, 530.
Montgomery, 562, 576.
Morchar, 620.
Mortmain, 611.
Mony, 565, 624.
Mony weding, 543.

Mouth-ball, 546.
Munday, 577.

N.

N*Ativus*, 596.
Nief, 583.
Nevil, 617.
Nobles, 563.
Norfolk, 616.
Normans, 627---631.
Northumberland, 616.

O.

O*Ath*, 615---622.
Oblata, 576.
Ora, 564.
Order of Tenants, 579,
 580.
Osborn, 621.
Out-avarage, 578.
Outland, 565.

P.

P*Artable*, 566, 568, 570,
 571, 572.
Partisan, 594.
Patriarch, 525, 527, 529.
Peace, 556.
Pecunia, 540, 632.
Pecus, 540, 632.
Pillory, 561.
Plaints, 546.
Plantations, 636.

Plow,

I N D E X.

Plow, 565, 566.
Pone, 609.
 Pound, 600, 605, 640,
 642.
 Pound Breach, 612.
 Prelate, 563.
 Prescription, 622.
Primier Seisin, 575, 618.
 Proclaiming, 639.
 Property, 529, 541.
Pulcre placitando, 591.

Q.

Quality, 633,
 Quantity, 633.
Quo Warranto, 563.

R.

Record, 609.
Recordare facias, 609.
 Recovery, 590.
 Relief, 575, 618.
 Rent, 565, 567, 568, 571,
 572, 574, 575, 610,
 632.
 Rentals, 610.
 Replevin, 640.
 Rescous, 612.
 Robbery, 554.
 Road Knights, 551.
 Rolls, 610.
Romans, 533, 534.
 Ruthes, 587.

S.

S*Aca*, 560, 601.
Sans number, 632, 634.
Saxons, 535, 536, 622,
 623.
 Scabby Beasts, 632.
Scrudland, 582.
 Seignory, 533, 534, 541,
 548, 620.
 Seize, 613, 614.
 Selling, 592, 593, 611.
 Servant, 528, 539, 580,
 592, 593, 594.
 Service, 574, 610.
 Servi, 580, 592, 593.
 Sessions, 643.
 Sharers, 563.
Shirebrooke, 589.
Shiremote, 589.
 Shires, 554.
Shrewsbury, 576.
 Slaves, 623.
Smitbland, 579.
 Socage, 565--576.
Socha, 560, 601.
 Socmen 544.
Soke, 539, 540, 541, 543,
 562, 566, 567, 585,
 626.
 Soldiers, 552, 623.
 Solidi, 552, 623.
 Steward, 613, 643.
 Stranger, 557, 558, 640.
 Straw, 587.
 Stray, 599, 600.
 Street, 529, 530, 535.
 Stultiloquy, 591.

Succession,

I N D E X.

Succession, 619.
 Suiters, 525, 590, 614.
Sub, 566.
 Surcharge, 633, 640.
 Surrender, 611, 612, 614.
Swillingland, 580.
 Sword, 562, 594.
 Surety, 554, 555, 556,
 616.
Syngrapha, 588, 589.

T.

T *Acitus*, 530, 570.
 Tally, 547.
 Tenant, 618, 620.
 Tenmentale, 555.
 Tenure, 565, 618, 619,
 620.
Terra Operaria, 577.
Terra Popularis, 575.
Terra Servilis, 577.
Terra Susanna, 581.
Terra Vulgi, 574.
 Testament, 608.
Testamento dignus, 549.
Tbane, 537, 539, 540,
 541, 543, 546, 547,
 548, 549, 552, 553,
 559, 563, 626, 628.
Thaneland, 539, 549, 568.
Theam, 559, 560.
Theft, 554.
Tbol, 559, 560, 601.
Thurgarton, 583.
 Timber, 606, 611.
 Tithing, 554, 556.
 Titts, 641.
 Toll, 601.
 Tolt, 609.

Tourn, 558, 560, 561,
 603.
 Treason, 544.
 Treasuretrove, 601, 602,
 603.
 Trees, 611.
 Trespafs, 609, 612.
 Tribe, 526.
Trinodis Necessitas, 540,
 624.
 Trithings, 554, 557, 561,
 Tumbrell, 561.
 Turbary, 626.

U.

V *Andals*, 531.
 Vassals, 620, 621.
 Vicinage, 630--635.
Vi et Armis, 558, 609.
 Village, 533.
 Villains, 573, 574, 592,
 593, 595, 615, 626.
 Uncuth, 558.
 Undertakers, 531, 532,
 552.
Underwod, 585.
Urchefeld, 571.
 Usage, 622.
Utsangthefe, 560.

W.

W *Aife*, 599, 600.
 Wakes, 543.
Wales, 623.
Warren, 562.

Ware-

I N D E X.

- | | |
|--|---------------------------------|
| <i>Wareland</i> , 581. | <i>Wills</i> , 608, 612. |
| <i>Walt</i> , 568, 608, 612,
622. | <i>Witenagemote</i> , 548. |
| <i>We</i> , 589. | <i>Wisbred</i> , 587. |
| <i>Weregild</i> , | <i>Witness</i> , 548, 590, 592, |
| <i>Westminster</i> , 635, 636. | <i>Wives</i> , 583. |
| <i>White-rent</i> , 632. | <i>Wool</i> , 586. |
| <i>William</i> , 563, 593, 594,
595, 619, 620, 627. | <i>Working</i> , 600. |
| | <i>Workland</i> , 577. |
| | <i>Writ</i> , 568. |

F I N I S.



Handwritten notes or scribbles in the upper right corner, possibly including the number '100' at the top right of the page.